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SENATE RULES COMMITTEE
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1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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5 HEARING

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10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

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15 WEDNESDAY, APRIL 23, 2008

16 1:33 P.M.

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26 Evelyn J. Mizak
27 Shorthand Reporter
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APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR GIL CEDILLO

SENATOR ROBERT DUTTON

SENATOR ALEX PADILLA

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Appointments Consultant

BILL BAILEY, Consultant to SENATOR BATTIN

DAN SAVAGE, Consultant to SENATOR CEDILLO

CHRIS BURNS, Consultant to SENATOR DUTTON

BILL MABIE, Consultant to SENATOR PADILLA

ALSO PRESENT

WILLIAM C. BUSH, Director
Department of General Services

CHRIS MICHELI
Natoma Technologies

RICHARD DRYDEN, Executive Director
California Disabled Veteran Business Enterprise Alliance

BETTY JO TOCCOLI
California Small Business Association

LENNY GOLDBERG
California Tax Reform Association
Privacy Rights Clearinghouse

MARC APREA
Hewlett Packard
Citrix Systems

1 FRANK RAMIREZ
The Americas Group

2 KURT COOKNICK
3 American Institute of Architects
4 California Council

5 JAMES BRADY, Vice Chair
6 California Black Chamber of Commerce

7 DEBRA CALEVRO
8 AeA

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We have only one person to torture today. We have never, ever only had one person. I'll let you know how it goes. We normally spend a couple hours with this.

Mr. Bush, having said all that, would you like to come on up and dazzle us.

MR. BUSH: With trepidation, sir.

CHAIRMAN PERATA: It's always in order.

Welcome.

MR. BUSH: Thank you very much.

Good afternoon, Chairman Perata and Members.

It's an honor to seek your confirmation here today as the Director of General Services.

If I may, I'd like to introduce my family. With me today is my wife.

CHAIRMAN PERATA: Good old pro, introduce your family first. Good insulation.

[Laughter.]

MR. BUSH: Thank you.

My wife, Elaine Bush. You may have met with her previously. She's the Chief Deputy Director of the Department of Mental Health.

CHAIRMAN PERATA: I'm getting up there in years but I'm not senile. I remember her.

[Laughter.]

MR. BUSH: And also with us is our daughter, Kara

1 Bush.

2 CHAIRMAN PERATA: Welcome.

3 MR. BUSH: Thank you.

4 CHAIRMAN PERATA: Is that a fellow traveler?
5 Friend? Welcome.

6 MR. BUSH: Thank you.

7 I come to you today having been a public servant
8 for over 33 years. Most of my career was with the Franchise Tax
9 Board as the Assistant Executive Officer. More recently, I
10 served as the Undersecretary of the State and Consumer Services
11 Agency.

12 Throughout my career, I've focused on many ways
13 to make government more responsive to the citizens and to the
14 organizations we serve. For example, while I was at the
15 Franchise Tax Board, I innovated -- I implemented a number of
16 innovative ideas like CalFile, ReadyReturn and Electronic
17 Filing, all which made filing much easier for Californians, and
18 reduced filing times, and actually got refunds back to taxpayers
19 in five to seven days rather than weeks that previously had been
20 experienced.

21 I was involved in the first performance based
22 procurement in the country. And rather than telling a vendor
23 how to do something, it was rather innovative because what we
24 did is, we defined the business problem. We asked the vendor to
25 come in and propose best of breed solutions, and the winning
26 vendor was really invested in the success of the project.

27 The interesting thing was, the vendor was paid
28 based on performance, not on just delivery of the system. In

1 other words, the vendor was only paid when the business
2 objectives were achieved, and then only from the benefits and
3 the new revenues realized, something that we're now doing today
4 at DGS.

5 As the Director of DGS, I'm fostering and
6 building that same kind of environment, focusing on creativity
7 and results. My goal is to help our clients achieve success
8 while ensuring accountability and programmatic compliance.

9 We're already transforming and improving our
10 services. We have -- we put in place a more interactive and
11 collaborative procurement process, one which focuses again on
12 business solutions. We're also more realistic about sharing
13 risk with our vendor partners, all of which will bring, we hope,
14 better pricing and more competition to California.

15 This summer, we'll be implementing a new
16 e-procurement system which will reduce procurement time. It's
17 one thing we continue to hear about over and over and over
18 again. We'll reduce the mountains amounts of paper that exist
19 today, and it'll give us the data to make better buying
20 decisions. It'll also give us, and it'll tell us in real time,
21 on-line through the internet, what's being purchased, who's
22 making those purchases, and when those purchases are occurring.

23 Another project DGS for the first time will be
24 putting in place, we'll have all state agencies' vehicle and use
25 information in a single data base. Today, there are over 100
26 agencies that own vehicles out there, and there is no single
27 place to get that information other than to go to DMV. State
28 agencies will have real time access to the cost, and use, and

1 maintenance of their fleet of cars and trucks, and it will allow
2 DGS and our customers to better analyze and optimize the state's
3 fleet.

4 Finally, DGS remains committed to reducing our
5 own carbon footprint by improving energy and operational
6 performance of our buildings, by better managing our fleet, and
7 by purchasing goods and services that are environmentally
8 friendly.

9 Let me tell you, I've enjoyed the many, many,
10 many challenges of DGS and certainly the rewards in leading an
11 organization as diverse as DGS.

12 So again, thank you for your time, and I'm
13 certainly happy to answer any questions that you might have.

14 CHAIRMAN PERATA: Thank you.

15 I was going to start by talking about the dusting
16 in my office, but that would seem self-centered.

17 MR. BUSH: I can understand Senator Battin, who
18 just moved into his office.

19 CHAIRMAN PERATA: I don't mind if it's an
20 optional service.

21 [Laughter.]

22 CHAIRMAN PERATA: Well, let me just begin by
23 saying that one of the nice things for General Services is that
24 a lot of the things that we talk about on the policy side, you
25 get to implement. I think the best thing California can do is
26 lead by example.

27 The Governor's been now pretty much talking about
28 the greening of California as something that he would see as of

1 legacy weight.

2 I'm reminded that when I was teaching in the
3 '70s, there was a book called The Greening of America. Somehow,
4 between the time that we all thought that was important and now,
5 or recently, we haven't done as much about it as we can now.

6 But with the Governor putting the emphasis that
7 he has put on this, I think the way we should measure it is,
8 first, how well we're doing ourselves. And when it comes to
9 purchasing cars, and maybe the key to the problem that I see is
10 what you said earlier, you have no central source.

11 But we're purchasing flex vehicles, but we only
12 have four stations in California that provide it; is that a
13 correct understanding?

14 MR. BUSH: We actually have five, and going on
15 six.

16 But still you're right, a minimal number of
17 stations.

18 CHAIRMAN PERATA: So, I'm assuming that even
19 though now we have flex vehicles, we don't have access to them,
20 so they're virtually not. You know, they're not ethanol
21 induced.

22 Which would lead me then to ask the question,
23 where are we with hybrids and purchase of hybrids?

24 How many cars do you think we buy a year?

25 MR. BUSH: Good question. Somewhere in the
26 low -- less than 4,000 or so cars generally.

27 But with respect to purchase of vehicles, and
28 you're right, back to the original issue, which is California

1 doesn't know what we have. I mean, there was an issue sometime
2 back, you'll recall, stories in the paper with regards to the
3 number of vehicles that California actually had. And there was
4 a reconciliation back with DMV to try and come up to what's
5 California's fleet.

6 California's fleet, just to give you a little
7 background, is roughly 50,000 vehicles. And that's all vehicles
8 registered in the state, anything that has a plate. Of that,
9 there's less than 40,000 of those that are light duty, what
10 we'll call, you know, passenger cars and light-duty trucks. The
11 rest is more heavy equipment.

12 So with that said, as California begins to look
13 at its needs, we really do need to get a handle on where our
14 vehicles are, what our vehicles cost us, the maintenance on
15 them, fuel use. And there are systems out there to do that.

16 So, our first strategy is really to put in place,
17 beginning this summer, a new fleet asset management system.
18 What that'll do is allow us to bring in some of the data that's
19 even provided on something called the Voyager Card. That brings
20 the data in so we'll know where those vehicles are, usage, much
21 of that information will come back in and give us the kind of
22 tools that we need.

23 With regards to vehicles that we're purchasing,
24 we purchase vehicles, and we're somewhat limited because we're
25 required to purchase vehicles under E-pack federal guidelines.
26 E-pack requirements require us to purchase 75 percent of our
27 vehicles as alt-fuel vehicles. And that's without regards to,
28 clearly, the availability of fuel, and the whole strategy there

1 whether --

2 CHAIRMAN PERATA: Alt-fuel meaning gasoline?

3 MR. BUSH: Alternative fuel, I'm sorry.

4 And the whole strategy there really is one of,
5 you know, from the federal level, they want to increase the
6 demand for alternative fuels, you know, something other than
7 gasoline itself. And clearly the strategy is, if you look at
8 alternative fuel vehicles, and I happen drive a hybrid that gets
9 around 50 miles per gallons, but my hybrid uses -- and again,
10 assuming we're using alternative fuel -- my hybrid uses twice
11 the gasoline that an alternative fuel vehicle that used E85
12 would in fact use. And that's the theory.

13 So, generally, you know, just to give you some
14 quick numbers, if you look at, you know, a vehicle that gets
15 only 20 miles to the gallon, and it uses 5 gallons of E85 fuel,
16 you know, roughly 15 percent is gasoline. So, it uses less than
17 a gallon of gasoline petroleum based to go that 100 miles.

18 My alt-fuel vehicle, or my Honda hybrid, uses
19 roughly -- I mean, at 50 miles per gallon, it still uses two
20 gallons of gasoline.

21 So, the strategy is to get something that gets us
22 away from gasoline to alternative fuel in the long term.

23 With that said, you know, you're absolutely
24 right. At this point, we have bought vehicles, and we don't yet
25 have the gasoline or the E85 ethanol to put in them. So, that's
26 really the challenge, I think, for California.

27 And so, our focus at DGS at this point, and
28 again, we don't control -- I mean, everybody looks to DGS

1 oftentimes as we control all the fleet, we control all the
2 buildings, when in fact DGS owns about 15 percent of the fleet,
3 or about 7500 of those vehicles. Many of those vehicles that we
4 do own are actually leased out to various departments and
5 agencies. A number of them are undercover vehicles which are
6 what's called cold plated, so they don't actually "exist,"
7 quote-unquote.

8 Again, with that said, our strategy is to get out
9 to everyone who has E85 vehicles, including the CHP, who now
10 also has their 2008 Crown Vics are E85, to get those -- those
11 vehicles --

12 CHAIRMAN PERATA: Do they have to go and find one
13 of those five stations?

14 MR. BUSH: At this point they do. We're trying
15 to get -- we're trying to get something put in place which, you
16 know, for example, at CHP we're trying to get a tank moved out
17 to -- to their training facility in West Sacramento. And as I
18 was explaining to Senator Padilla yesterday, we go through a
19 whole host of regulatory issues that we have now started to
20 find, between ARB and CEC and DGS, really as a way -- you know,
21 what are the barriers that we need to overcome to get more E85
22 stations operational?

23 Because California, I mean, we want to be a
24 leader. We clearly do want to have, you know, the greenest
25 fleet in the nation. I think the Legislature wants to do that,
26 the Governor wants to do that.

27 Again, our challenge is, what do we need to do to
28 get more E85 stations up and operational in California? It's

1 not just our fleet. I mean, there are hundreds of thousands of
2 cars that are being, you know, used today. People buying these
3 vehicles, and they're not putting, you know, ethanol in them.

4 CHAIRMAN PERATA: Maybe you ought to take a trip
5 to Brazil. They seem to have worked this out pretty
6 well.

7 MR. BUSH: I was in Brazil last summer. And
8 Brazil uses -- I mean, as a minimum, their fuel -- their fuels
9 that they use in their regular cars is, on the other side it's a
10 minimum of 15 percent ethanol, or 20 percent ethanol. And
11 they've actually got it figured out, I mean, at least that piece
12 of it.

13 CHAIRMAN PERATA: Backward country like that, go
14 figure.

15 MR. BUSH: Go figure.

16 CHAIRMAN PERATA: It sounds like the same guy
17 that wrote the No Child Left Behind wrote the specs for e-pack.
18 You know, we make a tough standard, but reality doesn't matter.

19 MR. BUSH: It is, because part of the problem we
20 have is, if California doesn't buy those vehicles, we are
21 subject to federal fines, you know.

22 And I mean, I'd love to buy -- I'd love to buy as
23 many hybrids as the next guy. I drive one, you know. But at
24 the same time, I don't want to run and pay the feds penalties
25 for failure to comply.

26 CHAIRMAN PERATA: Why don't you go ahead.

27 SENATOR PADILLA: Picking up on the same topic,
28 and we talked about in my office yesterday, I think part of why

1 it's going to be a continuous drum beat here on this issue is,
2 we're living in this post-AB 32 environment. It's both the
3 Governor who continues to travel the world and be vocal about
4 not just the greening of California and of the world, but the
5 urgency behind it, which I got to believe you and the department
6 agrees with; correct?

7 MR. BUSH: Absolutely.

8 SENATOR PADILLA: And obviously, the Legislature
9 had a big role to play in AB 32 as well. So, if it's the
10 direction that we all want to go, and the urgency is there to
11 get there sooner rather than later, we can't help but just
12 scratch our heads when we look at these things like the flex
13 fuel vehicles.

14 I still don't hear an answer to what I heard
15 Senator Perata asking. That is, we talk about the flex fuel
16 vehicles, do we have a specific plan in place to get from the
17 five pumps today to the hundreds if not thousands of pumps we
18 need in the state for flex fuel vehicles to be meaningful?

19 MR. BUSH: Right, and that's a fair question.

20 Right now the Climate Action Team does have a
21 subgroup which is specifically focused on fleet.

22 SENATOR PADILLA: Do we have a plan or do we not
23 have a plan?

24 MR. BUSH: We have the beginnings of a plan.

25 SENATOR PADILLA: That doesn't sound like a final
26 plan to me.

27 MR. BUSH: We do not yet have a final
28 plan.

1 SENATOR PADILLA: When can we anticipate having
2 plan in place?

3 MR. BUSH: That is a fair question, and again, I
4 think the subgroup of the Climate Action Team is presenting that
5 plan to the Climate Action Team. I think we are close.

6 SENATOR PADILLA: In the meantime, are our fleet
7 purchasing policies, will they continue to stay the same?

8 I mean, if we don't even happen to have a plan, I
9 can't imagine we're going to get a meaningful number of stations
10 in a year, maybe two years. So in the meantime, we'll continue
11 to buy flex fuel vehicles when we don't have the flex fuel
12 access?

13 MR. BUSH: Yeah, and again, I think there's two
14 issues here. One is, we have the state vehicles, and they're
15 relatively -- I mean again, we want to take the leadership
16 position, but in terms of total vehicles, we're relatively minor
17 in the overall picture.

18 SENATOR PADILLA: I understand. But as we talked
19 about in my office yesterday, if we're going to lead, we have to
20 lead by example.

21 MR. BUSH: We do. And so again, what we're doing
22 with respect to the fleet itself, we are trying to bring to the
23 table at each and every venue where we have state vehicles,
24 fuels including -- including, we're working with Caltrans, for
25 example, to bring bio-diesel. So, Caltrans, on all of their
26 equipment that runs diesel, we're trying to run bio-diesel. So,
27 it's more than just E85.

28 SENATOR PADILLA: You mentioned earlier there may

1 be some obstacles for actually getting more stations up and
2 about the state.

3 Can you name one, two, or three specific
4 obstacles?

5 MR. BUSH: Sure, absolutely.

6 There are roughly 9,000 stations in California,
7 you know, commercial fueling stations. So, as we look around
8 the state, I mean, ideally we need to make certain that E85 or
9 ethanol kinds of fuels, or other alternative fuels, are
10 available at those facilities. I mean, if we don't make fuel as
11 seamless to use as we do gasoline, people are just going to
12 continue to put gasoline in their car unless there's some
13 financial incentive to do that.

14 One of the things that we see is that, you know,
15 we have talked with a number of fuel vendors that have tried to
16 put fuel into existing stations. And there are -- you know,
17 E85 fuel is more corrosive than gasoline. And so, one of the
18 things that, you know, right now people are dealing with is, can
19 ethanol go into existing tanks?

20 If we can't deal with that issue, part of the
21 problem is going to be, you know, who -- as a station owner,
22 would you be willing to tear up your station to put in another
23 tank to support E85?

24 SENATOR PADILLA: And that's obviously a very
25 real issue that needs to be worked through and overcome. That
26 ought to be one area of focus.

27 But like I said a minute ago, it doesn't seem
28 from what I'm hearing that we'll have that figured out, we'll

1 have a plan the place, and therefore hundreds if not thousands
2 of stations in the next couple of years.

3 So in the meantime, will we continue to buy flex
4 fuel vehicles, or does it make sense to revisit the policy and
5 maybe buy hybrid vehicles in the interim, where we're going to
6 actually achieve short-term real fuel efficiencies, emissions
7 reductions, while the flex fuel infrastructure is put into
8 place?

9 MR. BUSH: Yeah. I mean, we could -- again, we
10 could apply to the federal government for that. We've -- you
11 know, California obviously has applied to the federal government
12 on some other fronts. But we could apply to the federal
13 government for an exception to that policy.

14 There are roughly 340 or so fleets in the U.S.
15 Of that, there are about 12 to 15 that have applied for the
16 exception. As far as I know, there have been one or two that
17 have been granted. And the only way that they will grant an
18 exception is where you have enough use of alternative fuels that
19 the total overall usage of gasoline would not be more under the
20 alternate plan.

21 So, our chances of getting an exception to this
22 is difficult at best. I'd say probably not possible.

23 SENATOR PADILLA: Are we at least making that
24 attempt? You said there's been a couple that have been
25 successful?

26 MR. BUSH: Yeah. I believe Washington, D.C. has
27 because they have more -- I mean, clearly there're different
28 parts of the country that have more alternative fuel available

1 than does California.

2 SENATOR PADILLA: Let's move on from the flex
3 fuel vehicles to actual green buildings. It was a topic of
4 conversation, colleagues, when Secretary Marin was coming
5 through for confirmation last year. There's an Executive Order
6 out there that says as we build state buildings and rehab
7 significant rehabs of existing buildings, that we ought to meet
8 certain LEEDS standards in each every one of these to attain,
9 you know, certain efficiency, if you will, by certain dates.

10 How are we doing on that track? I had a chance
11 to check the most recent spread sheet that gave sort of building
12 by building, project by project, and was a little disappointed
13 to see instead of "complete, complete, complete," it's "to be
14 determined, to be determined, to be determined" status reports.

15 Can you elaborate on that?

16 MR. BUSH: Sure, absolutely.

17 Certainly back there was an Executive Order as
18 you reference. It's S-20-04, in which the Governor said we need
19 to reduce reliance on grid based energy by 20 percent by 2015.
20 I mean, that's really the goal.

21 California has two strategies to meet that. One
22 is to increase supply of energy off the grid. And secondly, to
23 reduce demand.

24 On the increase supply side, California's put in
25 place right now 4.3 megawatts of solar or PV, and to date we
26 have another 23 megawatts that currently are, you know, in the
27 pipeline, real projects that are going to come on line.

28 On the demand side, our strategy is to reduce our

1 energy usage in state buildings by 15 percent. And we're really
2 looking at two areas. One is retro-commissioning buildings
3 which essentially says we're tuning up the building. And
4 secondly, retrofitting the building, which means we're going in
5 and actually making changes to the mechanical systems, so on and
6 so forth.

7 On the retro-commissioning side, the expectation
8 is we'll achieve 8 percent of, you know, a reduction in our
9 total demand by 8 percent. To date, we've been experiencing
10 around 10.3 percent savings.

11 On the retrofit side, our strategy has been about
12 a 12 percent reduction. We're experiencing, you know, and this
13 is preliminary in retrofit, about a 17 percent savings.

14 So, we're -- the total 8 and 12 was 20 percent.
15 We expect, you know, at least at this point, our strategy is
16 that we may hit closer to 27 percent in the total overall
17 savings.

18 With that said on the retro-commissioning side,
19 our strategy is to go through all state buildings within five
20 years. So, any building larger than 50,000 square feet, we go
21 through and tune that up. Last year we did 25. This year we
22 have 21 on the burner. So, you know, we have 46 of about 112 to
23 120 buildings out there that we're -- actually we have retro-
24 commissioned or we're in the process of retro-commissioning.

25 SENATOR PADILLA: So can you sort of bottom-line
26 it for me? We're about a third of the way to the 2015 deadline.
27 Are we a third of the way to completion?

28 MR. BUSH: We are a third of the way to

1 completion on the retro-commissioning piece. We have begun our
2 work on the retrofit piece, which is to go back in.

3 Of course, tuning up a building is obviously a
4 bit easier than going in and replacing mechanical systems and
5 lighting control systems. That piece we have just begun.

6 We recently brought in a consultant to help us do
7 two things. One, to plot what it's going to take for us
8 obviously to ramp up and hit the 2015 -- hit the 20 percent
9 savings by 2015. And then secondly, give us the tool to plot
10 our progress against that.

11 I think California should be proud of where we
12 are, because we are further ahead than any other state. We have
13 13 buildings that have already achieved the LEEDS status. And
14 there is no one else in the country that has done that.

15 SENATOR PADILLA: As much as I appreciate that, I
16 also opened the Los Angeles Times yesterday and see this pitched
17 battle between Los Angeles and San Francisco to see who can be
18 more aggressive on adopting green policies, everything from zero
19 waste, to water conservation, to LEEDS requirements.

20 CHAIRMAN PERATA: They're no longer competitive
21 in baseball.

22 [Laughter.]

23 SENATOR PADILLA: They've got to focus
24 somewhere.

25 And in the meantime, the status of the state's
26 efforts continues to be pending, and to be determined. So,
27 that's where the frustration comes from.

28 Another issue that was raised when Secretary

1 Marin was here was not implementation of this Executive Order
2 for the purposes of energy efficiencies, but for water
3 conservation. So, I hope you have good news for me as we're
4 going back and recommissioning and rehabing buildings.

5 Are we, or are we not, including water
6 conservation efforts as well?

7 MR. BUSH: We are. And again, not to confuse the
8 two, although the two do overlap a bit. The Governor's
9 Executive Order was energy focused. I mean, that was really
10 about saving energy.

11 As you achieve the LEEDS EB, which is existing
12 building status, and there is the data or the Excel spread sheet
13 that we've put out on the web, and we do have out on the web for
14 everyone to look at and observe progress, because it's one of
15 those things that I'm a believer in. Put it out on the web.
16 That which gets measured gets done.

17 But when you do LEEDS for an existing building,
18 it focuses not only on energy but sustainability of that
19 building, which includes maintenance and operations. It
20 includes water usage. It includes the ongoing operations of the
21 facility. It includes the use of clean building products and
22 practices in how the building's run. It includes recycling.
23 There's a whole host of things that have to be achieved in order
24 to get LEEDS existing building status.

25 SENATOR PADILLA: It sounds like what you're
26 being charged to do.

27 MR. BUSH: Well, again, our task is to, again,
28 bring together DGS.

1 Again, as I mentioned previously, folks look at
2 us as being the, you know, owner of all real estate in
3 California, or all state-owned real estate.

4 We own a percentage of it. And so, part of our
5 task is to do two things. One is to clearly green the buildings
6 that we're responsible for. And then two, partner with the
7 other owners of buildings.

8 SENATOR PADILLA: So, what do you need from us?
9 How can we help you succeed in this effort, because it's clearly
10 a priority for the Governor, clearly a priority for the
11 Legislature?

12 It's not a small task, I understand that. But
13 how can we help you be successful?

14 MR. BUSH: It is not a -- it is not a small task.
15 And my commitment to you has been that, you know, as we hit
16 these hurdles, I will come back and certainly ask you for
17 support in that regard.

18 I mean, some of the difficult challenges that we
19 have I'll just share with you, especially as you -- you know,
20 retro-commissioning or tuning up a building is one thing. It's
21 another thing when you go and you retrofit a building. You
22 actually need to expend some money to do that. And the way --
23 the only way to do that today is for, you know, the owner of a
24 facility, be it DGS or someone else, to actually take that out
25 of their operating budget. And they end up paying for that out
26 of the savings out of their operating budget.

27 And so, we've tried to come up with some creative
28 ways to help those department directors and agencies to fund

1 that. So today, we're using something called Energy Smart, or
2 GS Smart loans to actually front the money to various department
3 directors to make these changes. And again, they end up paying
4 for the savings ultimately out of their operating budget to
5 repay those loans.

6 But those kinds of things are very helpful as we
7 move this forward.

8 SENATOR PADILLA: One last question. We've
9 talked about water. We've talked about energy.

10 Let's talk a little bit about recycling and the
11 Buy Recycled campaign. How's that coming along?

12 CHAIRMAN PERATA: I'm drinking from a cup that
13 used to be corn.

14 MR. BUSH: Actually, I come forward today, and
15 I'm drinking water out of a -- out of a plastic bottle, which
16 I'm a bit embarrassed to say, because I think somewhere I've
17 heard that, you know, roughly 17 million barrels of oil is spent
18 annually to make, you know, these plastic bottles. And of
19 these, we recycle about, you know, 3 to 3-1/2 million barrels'
20 worth of plastic. So clearly, we don't even do a great job on
21 that.

22 But you know, again, recycling is something that
23 all of us have a responsibility in. I mean, we all have to do
24 that. And so, I think part of the that is the leadership that
25 each one of us show within our existing agencies.

26 DGS is taking it on. I also, you know, have to
27 point to a fellow director, George Valverde over at DMV. George
28 has done a tremendous job. He has sent his folks over to DGS

1 and partnered side-by-side in terms of how do we green our
2 buildings? How do we buy, you know, environmentally preferable
3 products? How do we recycle?

4 That kind of leadership has to happen by not only
5 the executive, you know, departments and agencies, it's got to
6 happen by the Assembly and the Senate also. I mean, we need to
7 provide that kind of leadership and provide that kind of
8 direction to our staffs about the importance.

9 And then again, just like fuel, it's got to be
10 seamless, you know, because when we start recycling, if it's not
11 easy to recycle, what do people do? They take this water bottle
12 when they're done, am I going to carry this water bottle back to
13 my office, or am I going to throw it in the trash behind you
14 somewhere?

15 SENATOR PADILLA: We'll keep an eye on you.

16 [Laughter.]

17 MR. BUSH: Yeah, thank you.

18 CHAIRMAN PERATA: Let me ask you a couple more
19 before we get into sale of property.

20 On your web site, is that current?

21 MR. BUSH: Our web site, is it as current as I
22 would like it? No.

23 Is the web site much better than it was when I
24 got there? Absolutely.

25 But, you know, if I can take just one second,
26 again, with respect to a web site, my belief has always been,
27 put the best information we have out there. The whole idea of
28 us providing reports and everything else, point in time,

1 absolutely useless. I mean, it's great you all can get a copy
2 of that.

3 But as I told Senator Padilla, we are going to
4 put out there: This is what we're going with our buildings. We
5 put that out there. You can download the spread sheet. You
6 can, you know, slice and dice it, and sort it however you want
7 and come back and beat us up with it. But it is the right way
8 for us to, you know, as government, you know, individuals to put
9 that information out for all of us to use and the public to see.

10 So, is it as current as I want? No. Will it get
11 better? It will.

12 CHAIRMAN PERATA: I just want to point out that
13 for every action there's a reaction. You've probably heard
14 that.

15 If this is made from corn, that means there's
16 less polenta around. Some of us find that troubling.

17 MR. BUSH: Some of the us like polenta.

18 CHAIRMAN PERATA: Exactly right.

19 You touched on a very good point. If we are
20 making an aggressive play for greening up the State of
21 California's purchases and everything else, but we have to take
22 away from existing resources to do that, it seems to me that
23 it's kind of a chicken-shit, if you'll pardon the term, way to
24 go about this. Not much of a commitment, because you're trying
25 to do a job. Somebody gives you an Executive Order, and then
26 somebody's going to short-sheet somebody else in order to be
27 able to do it.

28 If it's important enough to do, it would seem to

1 me to be important enough to fund.

2 This is a rhetorical question, because you'd lose
3 your job if you answer it.

4 But that's very troubling, because it seems to me
5 that California for years has wanted it both ways. We want to
6 have the sunshine. We want to drive our cars and all that.
7 Didn't want to pay for a goddamn thing.

8 I apologize. It's the steroids.

9 [Laughter.]

10 CHAIRMAN PERATA: And I will bring this up to the
11 Governor.

12 It seems to me that you could move faster along
13 the path you've charted if you had capital available.

14 It's like when the PG&E comes around to do an
15 energy audit at your house, they also make a low or no interest
16 loan available so you can do it, rather than have a 40-year
17 ARC.

18 We should be doing the same kind of a thing, or
19 cutting a deal with PG&E, let them finance us.

20 I'm glad I was able to ferret that out.

21 MR. BUSH: Thank you.

22 Just as a comment, our utility partners are
23 actually chipping in as part of our retro-commissioning,
24 retrofit projects, retrofit especially. They are offering
25 incentives to participate, so it does help to reduce someone
26 like George Valverde's cost when he does retrofit a
27 building.

28 CHAIRMAN PERATA: Imagine if we were putting up

1 our own money how fast we'd go.

2 Work on the web site, because I do think that
3 there are many people that measure things today -- I'm not one
4 of them -- but they go to a web site and find out what's going
5 on.

6 MR. BUSH: I'm a true believer of that, and I
7 appreciate your support.

8 CHAIRMAN PERATA: You're absolutely right about
9 the reports.

10 MR. BUSH: Yeah.

11 CHAIRMAN PERATA: I don't wait at night to see if
12 there's a new report.

13 MR. BUSH: Well, it's kind of like, if you're --
14 if you want the news, and you go to the newspaper these days,
15 you know, it's too late. I mean, everything happens at light
16 speed.

17 CHAIRMAN PERATA: Are there any newspaper
18 reporters out there? That didn't sound the way it was.

19 [Laughter.]

20 MR. BUSH: Some of the newspaper reporters are my
21 best friends over the years.

22 CHAIRMAN PERATA: Me, too. Absolutely.

23 [Laughter.]

24 CHAIRMAN PERATA: They treat us really well. We
25 appreciate that.

26 Senator Battin, do you want to talk about farm
27 land.

28 SENATOR BATTIN: I don't want to talk about farm

1 land. I want to talk about DGS's role in surplus property in
2 California.

3 I have, off and on for years, with utter
4 frustration tried to get, first off, to identify what we have in
5 surplus property.

6 And secondly, then to sell that property to help,
7 in this case now with the initiative that was passed, that would
8 pay back our deficit bonds that we let about three years ago.

9 I know DGS has been somewhat frustrated on this,
10 because you have to talk to Caltrans; you have to talk to the
11 University; you have to talk to different agencies.

12 We don't seem to really get a good handle on it,
13 but everybody points back at DGS and says, well, you're in
14 charge of this. So, why aren't you getting it done?

15 Can you kind of give us a guideline or an update
16 of what you are trying to do to identify those properties that
17 the state does not need and then get rid of them so we can
18 reduce the load on our taxpayers?

19 MR. BUSH: Sure, absolutely.

20 DGS's role in the process is to work with various
21 agencies. We have a, you know, a process of going out to the
22 agencies and asking, you know, what properties are surplus. If
23 properties are surplus, then there a couple of things that we
24 can do. We can work with other agencies that might have a need
25 for that particular property today.

26 And we've actually done some of those kinds of
27 things, and actually have something going on. Even, I think,
28 there was a mandatory meeting today down at Fairview to deal 10

1 excess acres of property down at the Fairview facility.

2 But again, our role is to go out to the various
3 departments and agencies and, you know, ask of them: What
4 properties do you no longer need; bring those to the table, and
5 then actually move those forward. To the extent other state
6 agencies don't have a use re-use, to put those in a surplus
7 property bill.

8 Continuing on with the dialogue we've had
9 previously, there's not been a surplus property bill, though, in
10 the last three years.

11 SENATOR BATTIN: There's not been a surplus
12 property bill that's passed in the last three years.

13 MR. BUSH: I'm sorry. There has not been a
14 successful surplus property bill in the last three years.

15 And so, you know, we are -- at this point there
16 are still some properties in the process, but you know, we
17 continue to kind of dwindle down in terms of additional
18 properties that are being added to that available list.

19 SENATOR BATTIN: So, you don't have any role in
20 identifying surplus property of other agencies? You just say:
21 Give us what you think is surplus?

22 MR. BUSH: We go out to those department, and
23 they're the once who make the decision. We -- you know,
24 Caltrans, CDCR and others that have the big properties: What
25 properties do you no longer need? And we then take those
26 properties and move those forward.

27 Of course we had -- there were additional
28 properties in CDCR, but as we started to look at -- or as CDCR

1 started to look at in-fill beds and the need, you know, some of
2 those properties then kind of came off the table.

3 SENATOR BATTIN: There seems to be, in my
4 experience, not all but more than I would like of state agencies
5 that seem to want to empire build. And for some reason or
6 another, they believe that having something equals the
7 importance of their being.

8 And I have been very frustrated in trying to get
9 even the list of properties that they have, what they don't
10 need. Some of these go back to the '30s. There's been vacant
11 land since the '30s, and yet somehow they don't want to surplus
12 that property.

13 I don't know if you can answer this question or
14 not, because it does really encroach into the domain of other
15 state agencies, but since you are the person here, and you are
16 leading the agency that really we look to, to divest us of
17 properties that we don't need, do you have suggestions on how we
18 can identify and move these other agencies along to free up that
19 property and attempt to try to have a successful surplus
20 property bill?

21 MR. BUSH: I don't know that I have suggestions
22 as to how you might bring all agencies together somehow to
23 identify excess property.

24 I can tell you that just recently, one of the
25 things I did do personally was to send out a letter to agency
26 secretaries and department directors and, you know, point out in
27 light of our current budget situation, you know, that it was as
28 important as ever to identify those properties so that we could

1 include them in a surplus property bill.

2 But no, I don't have any suggestions for you at
3 this point as to how we might bring all agencies together to say
4 what properties do you have, because, you know again, DGS is not
5 positioned necessarily to go into CDCR and Caltrans and tell
6 them from a business perspective, they no longer have a need for
7 this property.

8 SENATOR BATTIN: One other completely random
9 point here.

10 I have had for the longest time great frustration
11 for the fact that you're headquartered in the Money Store, the
12 pyramid over there. I know you have nothing --

13 MR. BUSH: It is a very nice building.

14 SENATOR BATTIN: I know.

15 I know you have nothing to do with that. It was
16 there when you moved in. So, my frustration is not with you.

17 But you're lighting it up again at night, I've
18 noticed. And we spend all this time talking with Senator
19 Padilla and Senator Perata about energy conservation.

20 I flew in on Monday night, and came in from the
21 airport. I got here just before midnight. And as we drove in,
22 that beacon was all lit up.

23 Not it, for a while, had been shut off. And it
24 was during the energy crisis when actually I made a big deal out
25 of it.

26 First off, I don't believe it's a great icon for
27 the Department of General Services to be housed in anyway, but
28 that battle was lost a long time ago.

1 MR. BUSH: It was a good rent.

2 SENATOR BATTIN: It is not, I don't believe, a
3 good thing to have it lit up.

4 MR. BUSH: We -- we -- we agree with you. And in
5 fact, DGS did in fact turn the lights off on that facility.

6 Occasionally, you know, occasionally there are
7 events that happen where, you know, the folks especially over at
8 Raley's Field when there's a home town game, have worked with
9 C.B. Richard, and -- C.B. Richard Ellis, our managers of that
10 facility, you know, to light the lights up for a couple of hours
11 as part of the home game. But generally, 99.99 percent of the
12 time -- you obviously flew over that, you know --

13 SENATOR BATTIN: So, what was going on Monday
14 night about 11:45?

15 MR. BUSH: I do not know, but I do know as I was
16 heading over here today -- I don't try and hide anything from
17 any of you -- as I was rolling over here today at just before
18 noon, they flipped the lights on to do some testing. And I
19 asked my leg. director, why are we -- why are the lights on
20 right now? What are we doing?

21 Now, we don't -- and again, it's -- we lease the
22 facility from, you know, Wacovia. C.B. Richard Ellis is our
23 building manager.

24 Again, somebody was testing something. But we
25 share your, you know, concern because again, we don't want to
26 not just from an energy usage perspective, because overall, you
27 know, the cost -- and I don't want to, you know, make it
28 sound -- you know, but the cost is not significant on a daily

1 basis.

2 But it is the leadership kind of position, that,
3 you know, you just don't want to have something like that. Much
4 of what we all do is, you know, leading by example. If we're
5 not going to, you know, step and walk the talk, who is?

6 SENATOR BATTIN: I agree.

7 MR. BUSH: So, I can't answer your question. I
8 do not know, but I do know that I am frequently there in the
9 evenings when it is dark, and there are no lights on the outside
10 of that building.

11 SENATOR BATTIN: I just think it's a bad
12 statement to people when we're going to end up having to cut
13 services for people this year, inevitably, however we do this,
14 that our Department of General Services is this glowing pyramid
15 icon on the Sacramento River.

16 Finally, Mr. Bush, I'm have impressed today. I
17 am back on Rules after being off for about a year, but I served
18 two years before that. I've sat through a lot of these, a lot
19 of these.

20 And there are many directors of state agencies
21 that have their talking points that they cover. They know kind
22 of what the Members are about, and so they get briefed on that.
23 And then, when the questions kind of go a little bit beyond
24 that, it becomes quiet.

25 You have in-depth answers to everything to the
26 very frank and very honest questions. I have a belief that your
27 department at your agency is one of the most difficult agencies
28 to deal with, and one of the most important ones. And I'm

1 thinking that they've picked the right guy to head it up.

2 I'm very impressed with your knowledge of even a
3 meeting you had today. Oh, I think we have a mandatory meeting
4 down here. You know what's going on, and that's a sign of a
5 very effective leader.

6 MR. BUSH: Good. I thank you very much for your
7 comments.

8 SENATOR CEDILLO: I have just some typical
9 questions we routinely ask.

10 Your thoughts about transition, both the change
11 of your department and a different environment, and the
12 transition or transition preparation for the aging of your
13 leadership of your department?

14 MR. BUSH: That's a great question.

15 When I was over as Undersecretary of the Agency,
16 we went through and looked at each of the departments. And I
17 have to tell you, DGS probably is the least positioned, you
18 know, looking at those numbers, because many of the people that
19 work at DGS have been there a long, long time. I mean, we have
20 a lot of years there.

21 And when you look at the numbers, you know, we've
22 gone back, and we've done the demographics, as I hope everyone
23 has done, and you know, it's well over a quarter percent --
24 approaching 30 percent of the folks are, you know, eligible to
25 retire. And we've all heard those numbers over time.

26 It's one of the things that when I was at FTB we
27 really focused on, and that is building an organization.
28 Because my goal is not to necessarily just achieve what I can

1 achieve during this administration, because I have no fantasy
2 about being around, you know, after a change of administration.

3 But what I need to do is put in place an
4 organization that will survive me in terms of the people.

5 CHAIRMAN PERATA: Your family looked shocked.

6 [Laughter.]

7 MR. BUSH: Yeah, I think my wife would be happy
8 from time to time.

9 But, you know, to put in place and build a great
10 organization, you know. And DGS does have it's challenges. It
11 really does.

12 So, you know, we've gone through and done the
13 demographic kinds of studies that one, you know, would typically
14 do, and have done the normal kinds of things that one would do.

15 We have some unique areas because we have some,
16 you know, very unique needs, and engineers, and architects, and
17 those kinds of things that today it's difficult or has been
18 difficult to this point to recruit. So, what we're really
19 looking at is the same typical things that, you know, one would
20 always do. You know, we're looking at recruitment and
21 development and retention of our employees.

22 We have gone through a whole host of things in
23 the recruitment area, like everybody else. We're trying to put
24 things on line. So, we've already put on line five of our exams
25 so we can get people in, because we scare people off.

26 I mean, you know, I can't tell you the number of
27 people that would come to work for the State of California, but,
28 you know, we know how difficult it is. They take the test.

1 They don't hear anything for how long? And then, you know,
2 sometimes somebody comes along and says: Would you like a job?
3 What do they tell us? I've got a job already, thank you very
4 much.

5 So, you know, we need to find ways of finding the
6 right people and doing what we need to do, you know, for the
7 State Civil Service System and get people, you know, on board.

8 We need to continue to develop staff. One of the
9 things that I'm involved in is, personally, I am one of the
10 sponsors for California State University Leadership for the
11 Government Executive. Myself, along with Clark Kelso and Dave
12 Gilb are the three sponsors for our program, which is really
13 designed to take our middle management tier of folks and develop
14 them into the leadership that, hopefully, will be sitting in
15 these seats, or at least this seat, you know, in the future as
16 we move forward, you know.

17 And looking at things that we've done previously,
18 like training and development, and rotational assignments to
19 give people different perspective, because too often people work
20 in one area, and they get this tunnel vision, and they can't
21 look beyond their own face.

22 You know, looking at, you know, some people talk
23 about retired annuitants. And I think they -- you know, it's
24 great to bring a retired annuitant back to maybe help fill in,
25 to do some workload, but I really see a retired annuitant as
26 something more than that. They really can be the mentor.
27 They're the ones who can come in and help, because too often
28 we're all too busy to develop our own people. I mean, we're

1 running around everyday putting out fires, when we need to think
2 about where the organization is going. We need to think are our
3 people ready, are people, you know, ready to move into our seats
4 in the future.

5 Because again, my goal is, if I weren't here
6 today, who could stand in behind me? That's always been where
7 I've come from. So, you know, we're doing a number of those
8 kinds of things.

9 And then I think kind of the last place is, you
10 know, and you said it, DGS is a big target. I mean, you know, I
11 wear a target on my shirt everyday, and I can't tell you the
12 number of folks that do throw us out in front of the bus over
13 and over again, which is: It's DGS's fault; they're the ones,
14 you know.

15 And granted, there are times it is our fault.
16 Not always.

17 But, you know, I need to make DGS a great place
18 to work. I really do. I need folks to want to come to work at
19 DGS and really, you know, believe in DGS as a neighbor, you
20 know, to help other folks really get their job done, because
21 that's what we're about. We are the state's business manager to
22 help other people be successful. We're there to help you all be
23 successful.

24 So, you know, I need to find a way, you know, to
25 continue to begin to build that culture within the organization.

26 SENATOR CEDILLO: I appreciate that, and I
27 appreciate the conversation, particularly the challenges with
28 cultural change within an institution, how you manage that, how

1 you generate it and how you manage it.

2 I'm interested in terms of that, in terms of
3 these changing demographics. People leaving, 30 percent within
4 retirement age.

5 How does that play with civil service rules,
6 MOUs, collective bargaining agreements? And then, how does that
7 interface with the desire that we all have to make government
8 look like California, to have government be reflective of the
9 diversity of the state?

10 MR. BUSH: Again, I think that's important
11 because, again, if we're going to -- as I said going into this,
12 if we're going to serve the citizens of California, if we're
13 going to serve our agencies, we need to be representative of our
14 citizenry. I mean, we really do. We need to have that kind of
15 diversity across California.

16 You know, and I've looked at that, you know,
17 throughout my career, you know, to ensure that even management
18 and supervision are reflective of the folks that work for them.
19 So, you know, I share your -- your interest and concern in that
20 particular area.

21 SENATOR CEDILLO: How are we doing in that? How
22 would you measure yourself in terms of a state like California,
23 a large Hispanic population that's huge? You could argue 30-40
24 percent. A large significant African-American, significant
25 Asian-American. Those numbers are huge.

26 Is your department either not in the 30 percent
27 ready to retire, but in the kind of next tier, who could step
28 forward, or do you look at that as a pool or resource for --

1 MR. BUSH: I think it is a pool. And I think
2 we're probably well positioned, especially as you said, folks
3 that are ready to step up into the next tier, to move forward
4 and assume those positions. I think we are much better
5 positioned than might be represented today at the highest
6 level.

7 SENATOR CEDILLO: Okay.

8 In terms of changes you've tried to make in terms
9 of culture, where do you think you've been most successful?

10 MR. BUSH: I think the most difficult thing at
11 DGS has been the -- the siloed organization.

12 SENATOR CEDILLO: Yes.

13 MR. BUSH: I kind of describe DGS as being the
14 General Electric of state government. You know, General
15 Electric, you kind of say, okay, you've got, you know, medical
16 devices. You have air craft engines. You have GE Capitol. How
17 do they all relate to each other?

18 And at DGS, you know, how does procurement relate
19 to real estate? How does it relate to state printing? How does
20 it relate to the Office of Administrative Hearings? You know,
21 on and on and on.

22 And so, with that said, up until more recent
23 times, DGS has been separated. It's been -- until we moved into
24 the Money Store, they were spread all over Sacramento area. So,
25 we've come together.

26 One of my key initiatives coming into that is to
27 break down that silo and have more enterprise focus. Because if
28 we're going to go out and truly provide services to our

1 customers in a more enterprise nature, you've got to do it
2 yourself. You've got to walk-the-talk kind of thing.

3 And so with that said, I'd have somebody go out
4 and speak to a group of folks. And they said, well, I'd like to
5 talk to you about this over in DGS. And it was always, well,
6 that's not me. Well, wait a minute. Aren't you DGS?

7 SENATOR CEDILLO: Right.

8 MR. BUSH: So, that has been the biggest
9 challenge. We need to change the culture internally within DGS,
10 you know, to take that. And not that -- because there are some
11 great people there, and they're doing great jobs within their
12 respective areas.

13 But we need to look more holistically as we
14 provide services, you know, within our buildings and other
15 needs. And as people approach us, how can we provide those
16 services, you know, in a more integrated way?

17 That's probably the biggest challenge that I've
18 faced so far.

19 SENATOR CEDILLO: Does having one location, DGS
20 in one site, does that advantage you in these efforts?

21 MR. BUSH: Well, it is more -- we are more
22 consolidated in the ziggurat these days.

23 But with that said, the State Architect is still,
24 you know, down on the other side of the Capitol here, and the
25 Office of Public School Construction is on the Mall, and the
26 Office of Administrative Hearings is still out on Gateway, and
27 the State Printer's still off of Richards Boulevard. So, while
28 the geographical, you know, distance sometimes does create, you

1 know, that difficulty, my focus has been to bring people
2 together in a collaborative way to work through issues.

3 Where today I hear my deputies say, I never
4 thought this other guy really had, you know, not to beat on the
5 other deputy, but I didn't see the same value that I see today
6 that this people is bringing with new ideas to help me be
7 successful in terms of what I'm, you know, trying to achieve.

8 Because again, if we're all driven towards the
9 same goal, we all share the same common vision, everyone will
10 help us get there. If you don't have that kind of vision
11 sharing, we'll all go our separate ways, but we'll pull in
12 opposite directions.

13 SENATOR CEDILLO: Lastly, I talked to you a
14 little bit about your efforts to improve the procurement
15 process.

16 MR. BUSH: Certainly.

17 You know, procurement -- and I've heard this from
18 a number of folks from time to time -- that sometimes it's more
19 difficult to do business in California than it is with the
20 federal government, particularly --

21 SENATOR CEDILLO: Ouch.

22 MR. BUSH: Yeah, ouch exactly.

23 And you know, again, I was an agency that did
24 business with DGS, and I understand, you know, within California
25 government, our whole focus is a competitive environment. It is
26 different than the private sector.

27 With that said, you know, some of the -- of the
28 big, big procurement -- procurements that we do in California,

1 particularly the IT kinds of procurements, those are very
2 difficult, you know, because they're so lengthy in time. And
3 so, what we're doing, again, is we're focusing on the business
4 outcome or problem, as opposed to telling the vendor how to do
5 something. It's a much more collaborative process so that
6 ultimately what the state gets is something that meets the
7 business problem, not meets a set of requirements out of 20
8 volumes of specifications.

9 And, you know, we have met with industry out
10 there to really figure out what are the true roadblocks, what
11 are the issues that we face. And really kind of changed that
12 whole approach to procurement.

13 I think the other piece that I mentioned earlier,
14 which is this E-Procurement -- and you know, again, I'm throwing
15 a lot of, I guess, weight on the E-Procurement back, but
16 ultimately procurement has been just too lengthy. It's a very
17 burdensome process.

18 And I think, as you suggested, as we lose folks
19 in California government, you can't have that knowledge walk out
20 the door. You've got to somehow capture that. And some of
21 these things, like E-Procurement, can help take that knowledge
22 that the folks have today and put that in a process that makes
23 it easier for departments and agencies to procure items and do
24 it so that we do it in the right way and don't get ourselves in
25 trouble.

26 SENATOR CEDILLO: Thank you.

27 CHAIRMAN PERATA: Senator Dutton.

28 SENATOR DUTTON: Just a couple follow-up

1 questions.

2 Recently, DGS received \$15 million from the PUC
3 for the green buildings program. Is that correct? Are you not
4 aware of receiving the money?

5 MR. BUSH: I haven't received the check.

6 SENATOR DUTTON: Is there a plan to receive it?

7 MR. BUSH: Actually, I think what you may be
8 referring to are -- is the incentives that the utility
9 companies --

10 SENATOR DUTTON: So, you're not getting --

11 MR. BUSH: No, we're not.

12 SENATOR DUTTON: -- from the PUC for any kind of
13 a green building program?

14 MR. BUSH: Essentially what that is, that is
15 money that the utility committees -- the utility companies have
16 committed to these retro-commissioning, retrofit projects.

17 So, once the project is done --

18 SENATOR DUTTON: These are state facilities?

19 MR. BUSH: These are state facilities.

20 Once these projects are done, then we apply back
21 to the utility companies, and they reimburse us part of the cost
22 to help cover the cost of these row retrofits.

23 Ideally, again, they have programs where they
24 need to be greener and save energy also. So, they're incentive
25 programs, but no, it's not money that we actually receive.

26 SENATOR DUTTON: And obviously, there'll be some
27 kind of relationship to this and energy savings? I would assume
28 that's the reason.

1 MR. BUSH: Yeah, because we won't get -- the
2 state will not get the money until the projects are up, and
3 actually there's something called an industrial grade audit that
4 has to be done to identify what the savings are. And that has
5 to be measured, and then the state gets paid.

6 SENATOR DUTTON: The other question, one thing
7 about the flex fuel stations and lack thereof, does DGS have any
8 involvement in the siting of the stations, or the fuels, or the
9 programs, or regulatory control or anything?

10 MR. BUSH: Our real direct control -- the answer
11 to your question is, not directly. Our direct control is really
12 what can we do with respect to state facilities in ensuring that
13 we have fuel available on site. So, for example, this last year
14 we did install a 15,000 gallon ethanol tank at the State Garage
15 over here, so anybody who's driving, I encourage all of you, you
16 know, fill up with our E85 fuel. It's there; it's available.

17 We're doing the same thing with the CHP. And to
18 Senator Padilla's question earlier, which is we're trying to
19 move a tank that we have to West Sacramento, and, you know, the
20 regulatory process that we go through is, you know, difficult at
21 best.

22 SENATOR DUTTON: So, we're having some regulatory
23 hurdles?

24 MR. BUSH: Yeah, and those are some of the things
25 that, you know, that the -- the subgroup here, the fleet
26 subgroup of the Climate Action Team has identified, those kinds
27 of hurdles. And I committed to the Senator to bring some of
28 those things back as we, you know, as we get through

1 them.

2 SENATOR DUTTON: Could you let me know, too? I
3 understand we've got some problems with the actual pumps and so
4 forth, that ARB still has to come up with some criteria and
5 things like this.

6 MR. BUSH: Any time you do something new, as we
7 all know, somebody has to put their stamp of approval on it.

8 SENATOR DUTTON: Yes, I understand.

9 Well, I'd appreciate it if you could let me know
10 what the regulatory hurdles are as well.

11 MR. BUSH: Certainly. Certainly do that.

12 SENATOR DUTTON: And then the last thing I want
13 to talk to you about is the issue regarding some of the
14 facilities. You and I already talked about the problem with the
15 BOE. I'm not going to go over that again, because that
16 obviously was before your time. You're dealing with a problem
17 that was preexisting.

18 But currently we're dealing with an issue we
19 talked a little bit about, the Chula Vista Veterans Home issues
20 and some of the problems that we encountered there.

21 MR. BUSH: Right.

22 SENATOR DUTTON: Have you looked at the problem?
23 Is it a design issue? Was it an inspection issue that created
24 those problems?

25 MR. BUSH: Yeah, I have personally gone to Chula
26 Vista to look at that facility. And I have to tell you
27 straight, you know, that that is a beautiful facility. I mean,
28 I talked to veterans down there that, you know, have resided in

1 that facility for quite sometime. And it's a terrific -- I
2 mean, it's a tremendous facility.

3 With that said, we do have some issues with the
4 showers down there. The showers today, we've had water
5 intrusion up the walls in the shower. And so at this point, we
6 do need to replace the showers in that facility.

7 We've hired a forensic architect who's come in
8 and gone through a number of the showers. Done, you know,
9 demolition work. Documented what he's found. Is now going
10 through -- or going back through the original design documents
11 to try and really ascertain what happened between the point in
12 design and actual build, and why we ended up showers -- in terms
13 of the showers as they exist today.

14 SENATOR DUTTON: So, we haven't made a
15 determination yet as to whether it was an error in design or if
16 it was an error in --

17 MR. BUSH: We have not, but we have --

18 SENATOR DUTTON: Somebody just didn't inspect
19 it?

20 MR. BUSH: We have contacted the contractor.
21 We've contacted the bonding company and put them on notice, and
22 they are quite interested, obviously, in our findings. And, you
23 know, again, we're sharing that with them also.

24 SENATOR DUTTON: One of the concerns I have,
25 right now we have about another \$400 million worth of homes
26 under construction and so forth in L.A. and Lancaster. I would
27 hope that somebody -- I know you weren't there when this
28 started -- but I would certainly hope that we're going to make

1 sure we don't have the same kind of errors occur. That was my
2 concern.

3 MR. BUSH: No, and that's a valid question
4 because, yeah, we have GLAVH, as it's called, Greater Los
5 Angeles Area Veterans Home, and as you suggest, we have West
6 L.A., Lancaster and Ventura, three new homes for veterans in
7 California to support three homes that we have already.

8 So, with respect to that, the things that we're
9 doing to make certain that we don't have same thing occur in the
10 future is, we have -- we've brought in a construction
11 management -- we have a construction management firm, and an
12 architect of record, and the inspectors that are inspecting this
13 facility. All of those folks have a much greater role in this
14 process than was done with this prior -- with the Chula Vista
15 facility.

16 And all of those folks -- any time there's any
17 kind of suggestion of change, there is agreement amongst those
18 folks so we don't end up with something built that's different
19 than as was designed, because that's where we run into problems
20 with these kinds of projects.

21 SENATOR DUTTON: Thank you.

22 CHAIRMAN PERATA: Just going back to the Board of
23 Equalization building. From what little I know about it, I know
24 that you had nothing to do with this, but we came across looking
25 like a Class One Chump.

26 And I would hope that before you leave, there
27 would be some kind of protocol in place so that whatever they
28 blew on that deal would never happen again, because it's hard to

1 imagine that all those things could go wrong as fast as they
2 did, and there was no prediction. So, curious mind.

3 I want to suggest something. Everybody here has
4 asked you to get back to us, or keep us up to date on something.

5 Given the primacy of this issue in the Governor's
6 portfolio, I would think that he probably would appreciate
7 being kept up to date as well on the progress that's being made.
8 I think it would be helpful, because a lot of times those of us
9 that come to Sacramento hear the word "lawmaker" and think that
10 we make laws and then we're done, but a lot of times,
11 particularly with term limits, there's no continuity.

12 It seems to me that you could provide some
13 continuity on some of these key areas: Where are we. And
14 rather than asking people here to go on a web site, which would
15 be a Magical Mystery Tour for a lot of us, if you just had a
16 report, and you just kicked it out saying: This is where we are
17 today on flex fuels, or whatever, it would be useful.

18 And I also think it would be helpful if the
19 Governor knew that, because if you go around the country as he
20 does, talking about California, it'd be nice to have some
21 specific examples, as opposed to getting embarrassed with a news
22 article saying, "You said this, but you're not doing anything."

23 So, that's my little bit of good government for
24 today. I notice you're not writing that down, but I'm sure
25 you're going to remember it.

26 Anybody here who'd like to come up and speak in
27 favor?

28 MR. BUSH: I think you're more than just a

1 lawmaker, Senator Perata.

2 CHAIRMAN PERATA: God bless you.

3 [Laughter.]

4 MR. MICHELI: Mr. Chairman and Members, Chris
5 Micheli on behalf of our client, Natoma Technologies, which is a
6 certified small business in the State of California.

7 They, like myself, have had the opportunity to
8 work with Mr. Bush, first at Franchise Tax Board, State and
9 Consumer Services Agency, and now at DGS.

10 I was happy to hear some of the questions that
11 came from Senator Cedillo, because it invited Mr. Bush to talk
12 about procurement reforms at DGS, which he has undertaken with
13 an important emphasis on small business. And I think he
14 described himself as utilizing a collaborative approach, looking
15 to industry as to what sort of roadblocks are there, and has
16 done a very good job in addressing the needs and concerns of
17 small business in particular.

18 So, let me just conclude, they did send you,
19 Senator Perata, a note urging your confirmation, and they said
20 that Mr. Bush is a uniquely skilled and dedicated public
21 servant, and the state will benefit from his appointment as
22 Director of DGS. It's also wonderful that he started with a
23 family of public servants, including his wife and Kara, his
24 daughter.

25 Thank you.

26 CHAIRMAN PERATA: And his grandfather George.

27 [Laughter.]

28 MR. DRYDEN: Mr. Chairman and Members, my name is

1 Rich Dryden. I'm the Executive Director of the California
2 Disabled Veteran Business Enterprise Alliance.

3 The State of California, which you may know, I'm
4 sure you do, has more disabled veterans than any other state,
5 230,000 unfortunately growing. And one of the things the state
6 saw to do was to put into effect a 3 percent goal for
7 contracting with those disabled veteran businesses that are
8 owned by disabled veterans here in this state.

9 Your man, to take that program forward, is
10 sitting to my right. He's been absolutely above the call to
11 work with us, and other small businesses in the state, to make
12 that happen. We're delighted, and we think he's the man for
13 this job. We urge your confirmation.

14 CHAIRMAN PERATA: Thank you.

15 MS. TOCCOLI: Good afternoon, President Pro Tem
16 Perata and Committee Members. I'm Betty Jo Toccoli, and I'm
17 representing the California Small Business Association. We are
18 203,000 small business owners. We're an umbrella advocacy
19 group.

20 I want to represent the organization, but I also
21 want to speak for myself. We support the nomination of Will
22 Bush to the Department of General Services really strongly
23 because of the fact of having had the opportunity to work with
24 him and to see first-hand what he's been able to do.

25 Department of General Services is probably one of
26 the most important departments in government to the small
27 business community, and particularly the minority small
28 businesses and the women-owned businesses. So, what we need to

1 see, and what we have seen under Mr. Bush's direction has been
2 demonstrated to us that he is the right person for the job.

3 He shows integrity. He shows fairness. He shows
4 wisdom, and he has the ability to listen to small business
5 owners, which is not always easy. We are a demanding
6 constituency at times. But he not only listens to us, he hears
7 what we have to say. He gives us logical answers back, but he
8 acts upon the discussion that we've had.

9 We think that Mr. Bush can deliver new levels of
10 accomplishment for the Department of General Services which not
11 only will help small business, but will help the State of
12 California. We urge his approval.

13 Thank you.

14 CHAIRMAN PERATA: Thank you.

15 MR. GOLDBERG: Lenny Goldberg, wearing two hats
16 for the California Tax Reform Association. We worked with
17 Mr. Bush at the Franchise Tax Board, and he was always, like,
18 the straightest shooter, the most capable of getting things
19 done. In particular, where there was discussion of IT
20 procurement, the FTB has been exemplary in its IT procurement,
21 and Will Bush led a lot of that, let a lot of those efforts.

22 We also had occasion, wearing for Privacy Rights
23 Clearinghouse, to work out issues within last year's budget,
24 when he was at General Services, to make sure that the new
25 Office of Information Security and Privacy had real
26 responsibilities for privacy protections.

27 He's a great civil servant, always a straight
28 shooter. My only disagreement is that I hope he's part of the

1 next administration, not just this one, whatever that may be.

2 CHAIRMAN PERATA: Thank you. You almost
3 jeopardized Mr. Battin's vote there.

4 [Laughter.]

5 MR. APREA: Mr. Chairman, Members of the
6 Committee, Marc Aprea. I'm here on behalf of our clients,
7 Hewlett Packard and Citrix Systems.

8 And I must have entered a parallel universe,
9 because Lenny and I are clearly on the same side on this, and
10 it's kind of unusual.

11 But our experience with Mr. Bush has been
12 exemplary from his days at State and Consumer Services, and now
13 at the Department of General Services. From a vendor's
14 standpoint, he has always been very clear as to what his
15 expectations are of us, whether it's regarding partnering up
16 with small and disabled veterans -- small business or disabled
17 veterans on contracting matters, or setting out a course of
18 direction from a vendor's perspective. That's something that's
19 very valuable because we understand what's expected of us.

20 He's always been accessible. He's always been
21 fair to us, and we appreciate the access and the fact that he's
22 not afraid of making a decision and sticking with it.

23 Thank you, Mr. Chairman. We urge your Aye vote.

24 CHAIRMAN PERATA: Thank you.

25 MR. RAMIREZ: Mr. Chair and Members, my name is
26 Frank Ramirez.

27 I'm a small business owner, and I want to urge
28 the confirmation of Mr. Bush. I've been impressed with what

1 he's done with small business, particularly his efforts on
2 AB 1761, the infrastructure bond funds, the issue of looking at
3 getting 25 percent of that funding into small businesses. And
4 he's got a very active Small Business Council in DGS, and he's
5 also active in other departments' discussions with small
6 business.

7 So, I'd urge your endorsement of Mr. Bush.

8 CHAIRMAN PERATA: Thank you, sir.

9 MR. COOKNICK: Good afternoon, Mr. Chair, Members
10 of the Committee. Kurt Cooknick with the American Institute of
11 Architects, California Council.

12 You know, I constantly hear the words
13 "responsive" and "collaboration." That's not lip service from
14 Mr. Bush.

15 Our members, our organization has found him to be
16 incredibly responsive and incredibly collaborative. And we've
17 certainly enjoyed our working relationship with him in the DGS.

18 He has amazing dedication. He's been here better
19 than an hour, and you haven't seen him squirm. After an hour of
20 grilling, he hasn't even turned himself over for the other side.
21 But I'll tell you, it's amazing to me --

22 CHAIRMAN PERATA: Is this a challenge which
23 you're issuing here?

24 [Laughter.]

25 MR. COOKNICK: You love a good challenge, right?

26 But candidly, I don't know how he even remembered
27 his daughter and his wife's name, because he goes from a
28 discussion about CHP Crown Victorias and Smith and Wesson

1 pistols to talking with architects about their projects. Truly
2 amazing how he keeps a handle on all these things.

3 We respectfully request your endorsement of
4 Mr. Bush for this position. Thank you.

5 CHAIRMAN PERATA: Thank you.

6 Yes, sir.

7 MR. BRADY: Good afternoon, Members of the
8 Committee, Mr. Chair.

9 My name is James Brady. I'm Vice Chair for the
10 California Black Chamber of Commerce, as well as a member of the
11 Small Business Council.

12 We are here to support the confirmation of
13 Mr. Bush. He's a very fine leader. He's very innovative. He
14 listens, and he's very inclusive of the process.

15 And I just can't imagine at this particular time,
16 and day, and age that you could choose a better candidate to
17 fill this position.

18 So, we strongly support the confirmation, and
19 thank you for your time.

20 CHAIRMAN PERATA: Thank you.

21 MS. CALEVRO: Good afternoon, Mr. Chairman,
22 Members of the Committee.

23 My name is Debra Calevro. I work for the AeA.
24 AeA is the nation's largest high tech trade association. We
25 have over 2500 members, half of which are here in California.

26 There is an advantage to going last. I just
27 cannot add anything else. Everything has been said.

28 We are very complimentary to the work that

1 Mr. Bush has done, and we urge your confirmation. Thank you.

2 CHAIRMAN PERATA: Thank you.

3 Anyone here in opposition?

4 A couple of questions from Senator Padilla.

5 SENATOR PADILLA: Two additional questions on
6 behalf of a colleague, Senator Negrete McLeod, in reference to
7 the Office of Public School Construction.

8 I guess there's some local school districts in
9 her area, but I'm sure in other parts of the state, that
10 complain about the lack of transparency in the work of the
11 Office of Public School Construction.

12 So the question is, has DGS looked into whether
13 the Office of Public School Construction provides sufficient
14 transparency, and are they forthcoming with their information to
15 the School Allocations Board and to local school districts?

16 Is that something that's under your purview?

17 MR. BUSH: The Office of Public School
18 Construction is under our purview. They provide the staff
19 support to the State Allocation Board.

20 One of the things that I've had discussions with
21 the Office of Public School Construction is, again, as a board,
22 we need to ensure that they get the proper support they need.
23 And so, to that end, my goal is to ensure, like we would expect
24 of any other board if we sat on a board. And I reported to a
25 board for 30 years. There was a certain expectation that was of
26 me to report to that board.

27 You know, boards should make policy. Staff
28 should carry out that policy. And there needs to be that

1 dialogue back and forth.

2 I share -- I share the issue. I understand the
3 issue.

4 SENATOR PADILLA: So, this is an issue that's
5 been brought to your attention before?

6 MR. BUSH: It has been brought to my attention
7 recently, yes.

8 SENATOR PADILLA: Is it on a couple of occasions,
9 or do we have a pattern here?

10 MR. BUSH: It's an issue that, again, we need to
11 ensure that, you know, we have a good relationship between our
12 board and the Assistant Executive Officer and Executive Officer
13 of that board, to that board.

14 SENATOR PADILLA: I appreciate that. I guess I'm
15 just trying to get your sense of whether there may be an
16 isolated incident or two, or whether there's repeated instances
17 of people communicating this concern?

18 MR. BUSH: I think generally that information
19 that needs to be brought to the board is brought to the board,
20 but there are incidents from time to time that clearly I have
21 seen that need to be resolved.

22 SENATOR PADILLA: I'll interpret that as more in
23 the pattern versus isolated incident category. If it's
24 sufficient enough for you to think there's systemic --

25 MR. BUSH: It is a fair issue. I mean, it is a
26 fair issue, and we need to deal with it.

27 SENATOR PADILLA: And other than just being
28 cognizant of it, what are we going to do to minimize the lack of

1 transparency in the future?

2 MR. BUSH: Again, you know, my goal is to ensure
3 that -- again, we provide -- I kind of wear -- it's interesting
4 because we wear two hats, you know, in DGS. We sit on the
5 board, and we provide ministerial support to that board.

6 So, I need to make certain that in either role,
7 that that staff is providing the support that it needs to that
8 board so that board can make the policy decisions that it needs
9 to make.

10 I think for the most part that is being done.
11 Again, from time to time there is a, you know, difficulty
12 playing in the sand box between some of the players that we need
13 to resolve. I won't -- I won't cover that up. We need to deal
14 with it.

15 SENATOR PADILLA: How would you suggest that we
16 communicate with you to ensure accountability going forward,
17 either of OPSC or your office?

18 MR. BUSH: Again, I think as we hear those kinds
19 of issues, we need to bring them forward. I'd like, you know,
20 specifics so that I can take those forward and deal with them on
21 a case by case basis.

22 SENATOR PADILLA: Okay. Well, I look forward to
23 following up.

24 CHAIRMAN PERATA: It occurs to me that one of the
25 things that we're going to be doing in the next three or four
26 months is looking for opportunities to consolidate and
27 eliminate. A lot of people around here think that the
28 Legislature should never make a decision like that until they

1 know exactly what the consequence would be.

2 I err on the side that that's what we have you
3 for. For example, the Office of School Construction, I've never
4 heard anything really good about it. People complain about it.
5 I don't know if it's because it's not transparent. I think it's
6 a pain in the ass, and it's spending a lot of money
7 unnecessarily.

8 But, you know, in the event that we just say get
9 rid of it, and Mr. Bush, you'll be responsible for putting
10 Humpty Dumpty back together. I don't think the State of
11 California would stop if a lot of stuff were eliminated and/or
12 consolidated.

13 But I'm encouraged by the fact that you're a good
14 administrator. It's easier for us to do our job in tough times
15 because we don't have to be the smartest kid on the block as
16 long as we have some smart kids working with us. So, enjoy your
17 next year.

18 [Laughter.]

19 MR. BUSH: Thank you. You certainly have my
20 support on that.

21 CHAIRMAN PERATA: All right.

22 Do we have a motion to approve?

23 SENATOR BATTIN: Move.

24 CHAIRMAN PERATA: Call the roll, please.

25 SECRETARY WEBB: Cedillo.

26 SENATOR CEDILLO: I just wanted to say that I'm
27 very impressed with this collaborative approach.

28 I never thought I'd vote a Bush, but I'm happy to

1 do so.

2 [Laughter.]

3 SENATOR CEDILLO: Aye.

4 SECRETARY WEBB: Cedillo Aye. Dutton.

5 SENATOR DUTTON: Aye.

6 SECRETARY WEBB: Dutton Aye. Padilla.

7 SENATOR PADILLA: Aye. I associate myself with
8 the comments of Senator Cedillo.

9 SECRETARY WEBB: Padilla Aye. Battin.

10 SENATOR BATTIN: Aye.

11 SECRETARY WEBB: Battin Aye. Perata.

12 CHAIRMAN PERATA: Aye.

13 SECRETARY WEBB: Perata Aye. Five to zero.

14 CHAIRMAN PERATA: Five to zero, congratulations.
15 You're out of here.

16 MR. BUSH: Thank you very much.

17 [Thereupon this portion of the
18 Senate Rules Committee hearing
19 was terminated at approximately
20 2:52 P.M.]

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That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

IN WITNESS WHEREOF, I have hereunto set my hand this
25th day of April, 2008.

56

APPENDIX

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DGS

State of California • Arnold Schwarzenegger, Governor
State and Consumer Services Agency

DEPARTMENT OF GENERAL SERVICES

Executive Office

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April 14, 2008

The Honorable Don Perata
Chair, Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

Senate Rules Committee

APR 14 2008

Appointments

Dear Chairman Perata:

Thank you for the opportunity to address the Senate Rules Committee on April 23, 2008, regarding my appointment as Director of the Department of General Services. I have provided responses below to the questions from your letter of March 28, 2008.

Goals

1. *What are your goals and objectives as director of the Department of General Services (DGS)? What do you hope to accomplish? How will you measure your success?*

As Director of the DGS, I am undertaking ambitious efforts to ensure the success of the department and our business partners. My primary goals are: 1) working collaboratively with internal and external partners to streamline the DGS' business processes; 2) improving State procurement practices by adopting innovative solutions while increasing the number of participating Small Businesses and Disabled Veterans Business Enterprises (DVBES); and 3) reducing the DGS' carbon footprint.

Business Process: I am committed to put into action a process of continuous improvement throughout the many broad and diverse divisions within the DGS. Almost a year ago, I established a Governance Council comprised of my deputy directors and key office chiefs to work together to ensure enterprise-level communication and coordination and provide me with fact-based and prioritized recommendations for process improvements. This Council works with the DGS' cross-discipline management teams to systematically reduce bureaucracy and resolve issues for internal and external stakeholders.

Procurement: The DGS has initiated many improvements to the State's acquisitions and procurement processes and systems. For example, the DGS' E-

Procurement system will be launched in July and will streamline the State's current disparate data collection, tracking, and reporting processes into a single automated system. The DGS is working diligently to implement cost-effective quality improvements while adhering to our regulatory and fiduciary responsibilities.

The DGS' Carbon Footprint: With respect to reducing the DGS' carbon footprint, we currently have five primary areas of focus: 1) ensuring the energy efficiency of new construction and renovation of existing State facilities; 2) maintaining and operating existing buildings by using environmentally sustainable practices, products and services; 3) greening the DGS fleet by establishing minimum fuel efficiency standards, retiring older higher polluting vehicles, and deploying alternative fuel vehicles and infrastructure; 4) implementing Environmentally Preferable Purchasing (EPP) standards and practices; and 5) fostering "green school construction" throughout California.

With more than 33 years of experience in State service, I realize that underlying the successful achievement of any stated goals and objectives is a comprehensive strategic planning process that includes measurement criteria and clear metrics. I am currently implementing an enterprise strategic planning system and process that will guide Departmental planning and prioritizing efforts and balance quality customer service with appropriate and effective control measures. Through this process, the Department will create measurement criteria and monitor progress through regular reporting mechanisms and the use of surveys. My philosophy is - that which gets measured, gets done. Certainly the better you measure it, the better able you are to manage it.

2. *As a result of turnover and an upcoming wave of retirements, many state agencies are facing or will soon face serious staff shortages. Please comment on the extent of this problem at DGS. Does DGS have a personnel succession plan in place? If yes, what are its key components?*

The DGS is anticipating a significant number of retirements over the course of the next three to four years. A recently completed analysis of retirement projections determined that 27.62 percent of the DGS workforce will be eligible to retire in the next three years. Complicating this situation is that the majority of the DGS' senior management personnel are already eligible for retirement or will be eligible to retire in the next few years. In preparation for these departures, the DGS is developing a comprehensive succession plan that consists of the following key components: 1) analyzing the current workforce to determine anticipated retirements and determining the classifications impacted by these retirements; 2) assessing future needs to identify staffing shortages in all classifications; 3) developing and implementing a comprehensive action plan focused on employee recruitment, hiring, retention, and training strategies; and 4) continually monitoring and

evaluating progress on the implementation of the action plan to ensure a successful implementation of the succession plan.

California Highway Patrol Contracting

Although the state's procurement rules allow the California Highway Patrol (CHP) to make some purchases themselves, DGS must assist them with purchases over a certain amount. The Bureau of State Audits (BSA) released an audit in January 2008 that criticized CHP and, to a lesser degree, DGS for purchasing irregularities that cost California millions of dollars.

BSA found in several large contracts that neither CHP nor DGS followed established procurement requirements. For example, DGS did not require CHP to file complete paperwork justifying a sole-source contract for handguns, which may have cost the state millions of dollars. In another case, although DGS caught a conflict of interest in a CHP motorcycle purchase, it failed to follow through on the settlement after voiding the contract.

BSA recommended a number of actions to correct the deficiencies. In response, DGS stated it has begun reviewing and revising a number of procedures related to procurement.

3. *In the letter responding to the audit, you indicated that DGS now requires all sole-brand purchase requests in excess of \$500,000 be reviewed and approved by both the assistant deputy director and the deputy director of Procurement. Has there been cause to exercise this level of review? If so, have purchase requests been altered as a result?*

Since January 2008, DGS – Procurement Division has received three such requests (sole brand in excess of \$500,000). One request was approved in accordance with the new procedure. In this instance, the purchase request was approved as submitted. The remaining two requests are still under evaluation.

4. *Also in the response letter, you commented that achieving the right balance of oversight and control between DGS and other agencies regarding procurement is essential. What do you believe is the right balance? Are there any tools DGS needs to better exercise its oversight duties?*

The proper balance of control and oversight is achieved through the effective integration of policies, processes, systems, and training. Through initiatives that focus on these critical elements, the DGS is effectively carrying out its statutory mandates while providing the services our business partners need to meet their programmatic missions. For example, the centralized E-Procurement system that is being deployed will allow the DGS to have the ability to monitor procurement

transactions and obtain the necessary information for effective oversight while providing a streamlined process for efficient procurements. By focusing our training program to support this system, we will also be able to further professionalize the State's procurement workforce and enhance capabilities.

5. *BSA was concerned that there was no way to ensure that employees involved in making decisions on contracts completed their conflict-of-interest forms. In response, DGS stated it would revise its purchase file index form by January 31, 2008, to include a note as to whether staff completed the conflict-of-interest document. Has this occurred, or not?*

The Procurement Division has revised the file index form to include a notation related to the completion of the conflict-of-interest transmittal form. We have notified the BSA in our 60-day status report that the recommendation has been fully addressed.

Veterans Homes

The Assembly Committee on Veterans Affairs conducted a hearing on November 28, 2007, regarding the state of a 400-bed veteran's home in Chula Vista, California. Although only eight years old, the facility is in disrepair. There is dry rot in the walls, sewage backup, a malfunctioning attendant call system, and shower seats fell from a bathroom wall causing injury to at least two veterans.

The department has requested funds for repairs to the facility and hopes to recover some portion from the contractor's bond. However, the contractor has since gone out of business. Critics contend that collection efforts are further hampered by lax recordkeeping and oversight by DGS and the Department of Veterans Affairs.

At a January 2008 meeting, DGS stated that they are still investigating whether they can hold the original contractor liable, and what caused the shower seats to fall.

Background – Chula Vista

The Chula Vista Veterans Home is approximately 208,000 square feet on 22 acres. It consists of six single story buildings; with wood frame construction, and stucco finish. The facility includes a common central facility that houses dining, administration, clinic, physical therapy, library, dental services, central plant and the skilled nursing facility. There are four residential buildings, and a wellness center building. The total project cost including design and construction was approximately \$29 million.

In June 2000, the California Department of Veterans Affairs (CDVA) took beneficial occupancy of the Chula Vista Veterans Home. At the time of occupancy there

were remaining "punch list" items that required completion (i.e., shower bench replacement). The DGS staff worked with the general contractor and did not accept the project until all items were completed on March 4, 2003. During this time the contractor ceased operations in California. The contractor retained another firm to complete this work which led to a slow response in the completion of the outstanding construction issues.

Subsequent to the State's acceptance of the project there have been two bench failures. It is important to note that there were no injuries as a result of either of the bench failures. The first shower seat failure occurred in December 2005 due to water intrusion and decay of the wood studs and blocking. Renovation of that shower was a collaborative effort between the DGS and CDVA. The second seat failure occurred June 2007; CDVA let contracts for renovation of that shower and an additional shower.

6. *What is the status of repairs to the Chula Vista home? What is the status of the contractor's bond and the shower seats?*

The DGS is working with the CDVA to take action to address all issues associated with the construction deficiencies at the Chula Vista Home. To date, a consultant has completed the project scope, phasing plan, and cost estimate to demolish and reconstruct the showers at the Campus. This planning effort and the report (budget package) have been submitted for review. The total cost to renovate the remaining 81 showers at Chula Vista is estimated at \$2.7 million. Concurrently, the CDVA is moving forward with the renovation of three of the existing shower units under separate contract.

The DGS recently concluded a forensic investigation to assess the cause of water intrusion within the shower walls. During the investigation, samples were taken of cultures inside the wall cavity and outside in the occupied space. Analysis was done on 12 shower rooms. All of the shower rooms identified mold cultures and 10 of the showers identified water intrusion in the wall cavity. The investigation of the showers shows:

- The waterproofing pan is minimal (one layer of hot mopped felt) and the felt does not continue up the walls of the shower;
- The escutcheon plate around the shower valves were not sealed well; and
- The nurse call button systems in some showers were not water tight.

On March 7, 2008, the DGS issued a notification letter to the contractor and its sureties of the construction defects found at the Chula Vista Home. As a result, the representative of the contractor that finished the project and several of the surety companies have contacted the State.

7. *Has DGS inspected the other veterans homes recently? Were problems found that should be addressed now before repairs become more costly?*

In addition to Chula Vista, the DGS has recently inspected the veteran's homes at Yountville and Barstow. These inspections identified the following issues:

- Yountville – The DGS and CDVA are adding additional cooling capacity to meet increased needs during hot weather. We are in the process of developing working drawings and a bid proposal. We expect to open bids in August and award a contract in October. Construction modifications will be completed in April 2009. In the interim, temporary equipment (additional chilling capacity) will be installed on site to handle any needs this summer.
- Barstow – This Veterans Home was designed and constructed with specifications similar to those for Chula Vista. However, the shower wall construction at the Barstow Home was constructed as designed. As a result, the Barstow Home has not experienced any water intrusion problems.

8. *California is planning to build several new veterans facilities by 2010. What changes are you implementing to ensure these problems do not recur?*

To ensure that the issues that occurred at the Chula Vista Veterans Home do not occur at the new veterans facilities, the DGS has taken the following action steps:

- Assigning the Construction Manager and Architect of Record a more significant role throughout the project.
- Providing additional training to inspection staff regarding daily records and tools available during construction.
- Directing inspectors to take a proactive approach when issues are discovered during construction.
- Employing the "design-build" procurement methodology for the Fresno and Redding projects. The "design-build" process allows owners to contract with a single entity to provide both design and construction services. This process is beneficial as it allows for the management of a single entity and the control of an integrated design and construction team and thereby minimizes any adversarial relationship between the builder and the designer. Further, the benefits include: shifting a majority of the project liability to the design-builder; reducing risk of construction claims due to errors and omissions in design documents; and improving the project delivery schedule.
- Applying lessons learned from Barstow and Chula Vista projects.
- Committing a larger staff to the projects.

In addition, the DGS has formed a collaborative partnership with CDVA by involving CDVA headquarters staff from the beginning of the project through all design phases. CDVA headquarters staff is also playing an active role during the

construction phase of the project, including attending weekly construction meetings and bringing on site the administrators and the Chief of Plant Operations earlier in the project delivery process.

Strategic Sourcing initiative

In anticipation of the state fiscal implementation, DGS developed a strategic sourcing initiative and strategic business plan in 2004. The term "strategic sourcing" is defined by DGS as "purchasing the best products and best services for the best value." This is achieved by streamlining procurement activities by consolidating, standardizing, and automating contracts to leverage the state's buying power. To date the state has saved over \$150 million.

DGS reports that it plans to make an internal procurement system and standardized product and service codes operable for internal use by July 2008.

9. *At present California spends \$8.9 billion in purchasing dollars, but less than half of that, \$4.4 billion, flows through DGS. Do you believe DGS should expand its purchasing authority to better exert its cost-saving abilities across the state?*

At this time, expansion of the DGS' purchasing authority is not necessary to achieve increased cost savings across the State. Currently, the Public Contract Code provides the DGS with sufficient authority to leverage the State's spending on services and the Department is working closely with our business partners to establish master service agreements in the areas that comprise the largest service categories. This effort will be aided by the statewide deployment of the DGS' E-Procurement system which will provide greater visibility into those services purchased by State agencies allowing the DGS to strategically source more service categories.

10. *How do you anticipate the new internal procurement system and standardized codes to affect purchasing operations?*

The new E-Procurement system is anticipated to streamline and standardize the State's acquisitions operations resulting in more expeditious processing times and more efficient use of resources. It is also anticipated that the system will provide greater accessibility of workload data allowing for better management of resources and faster, more accurate responses to information requests. The use of standardized codes will provide more complete and accurate spend data that can be leveraged to increase strategic sourcing opportunities and enhance the tracking of products and services purchased.

Information Technology Contracts

California has long had issue with information technology (IT) contracts. A recent article noted that the state expects to spend \$5 billion on IT over the next five years, including ambitious projects to centralize and standardize procurement systems and complaint systems for child care, foster care, and home care for the elderly and developmentally disabled. Competitive bidding will help ensure that these funds are spent wisely. Fewer and fewer companies are participating in IT request for proposals. As of May 2007 the last nine major IT contracts each brought in three or fewer bids.

One possible barrier is that DGS required a 50 percent bond on each contract, before the recent passage of AB 617 (Torrico), Chapter 736, Statutes of 2007. This bill deletes that requirement beginning January 1, 2008, and allows DGS to determine alternative criteria for establishing a proper method to balance risk. DGS has until June 1, 2008, to submit this information to the Joint Legislative Budget Committee and the state chief information officer.

11. *How is the department developing these alternative criteria? Are you working on strategies to target small businesses as well?*

The DGS is actively addressing the issue of performance bond requirements and providing alternative risk mitigation strategies for State information technology (IT) projects with the goal of increasing the number of suppliers participating in IT procurements. The DGS is in the process of evaluating responses to a bid for consulting services to provide assistance in the development of a comprehensive risk assessment framework; it is anticipated that this contract will be awarded within the next two weeks.

In the interim, the DGS has established risk assessment guidelines that were published as a broadcast bulletin to all state Procurement and Contracting Officers and Purchasing Authority Contacts on March 19, 2008. The interim guidelines require that departments conduct a risk assessment on all projects over \$1million for IT goods and services. Under these guidelines, risk is determined based on project criticality, total project cost; capital risk; project impact (internal and external); and project complexity. Based on this analysis, project risk is determined (high, medium, or low) and the appropriate risk mitigation strategy is determined.

The DGS fully recognizes and is working to minimize the burden that contract bonding requirements have placed on small businesses and DVBES. To that end, the DGS has worked closely with a number of stakeholder groups and independent experts to develop alternate criteria for balancing risk in IT contracting. As part of this effort, the DGS has consulted with a large number of constituent organizations, including: the DGS Small Business Council which includes representatives of the

California Small Business Association, IT-focused organizations such as the American Electronics Association (AeA) and the Information Technology Association of America (ITAA), the California Disabled Veterans Business Alliance, and local and ethnic chambers of commerce. IT procurement is also a regular focus of the DGS Partnership Council, which is comprised of representatives from key State departments, the California Procurement Reform Committee, and other stakeholder groups that interface with the DGS.

As the State's lead department in implementing the Governor's Executive Order, S-02-06, the DGS is fully committed to maximizing small business and DVBE participation in all State contracts. For IT efforts, this commitment extends to looking at unbundling contracts wherever possible and seeking small business and DVBE subcontracting commitments from large primary vendors on State IT bids. Additionally, the DGS routinely conducts specialized outreach and training workshops throughout California for potential small business and DVBE vendors, issues bid-related electronic broadcasts (E-Blasts) to targeted communities, and holds expanded bidders conferences with partnering workshops to pair up larger prime vendors with small businesses and DVBEs.

12. *What kind of outreach does DGS plan to conduct to inform potential bidders of the new criteria?*

The DGS has conducted focused outreach efforts on IT contracting and risk management. On February 28, 2008, the DGS held an IT Vendor Forum to discuss risk assessment, the interim risk guidelines, and other issues of interest to the IT vendor community. Representatives of more than 50 IT firms and industry associations were in attendance at this meeting. Additionally, the DGS has held several other IT Forums in the past nine (9) months with the IT supplier community. The work product from these meetings is available on the DGS' website at <http://www.pd.dgs.ca.gov/tas/default.htm>. The DGS has committed to conducting quarterly meetings with the IT vendor community and will continue to conduct extensive targeted outreach and training sessions, bidders' conferences, and partnership workshops for potential vendors.

13. *What else is DGS considering to increase competition in this area?*

In addition to the adjustments made to the performance bond requirements, the DGS has undertaken several process improvement measures that should result in increased competition on IT bids. Specific actions taken include the following:

- Increasing flexibility in the negotiation of the Standard IT Terms and Conditions and allowing IT vendors to provide two (2) cost proposals (one consenting to the Standard IT Terms and Conditions and a second cost proposal using the supplier's commercial terms and conditions).

- Utilizing the Solution Based procurement methodology (established by SB 954 (Figueroa/Dutton), Chapter 556, Statutes of 2005) for integrated IT projects over \$5 million.
- Establishing qualified supplier pools to streamline the procurement process and reduce the cost of bidding to the State.
- Reviewing and modifying terms and conditions for Commercial-Off-The-Shelf Software (COTS) based on a dialogue terms and conditions.

Managing State-owned Real Estate

DGS and various state agencies have made great strides in identifying surplus property in the past few years. CalTrans and the California Department of Housing and Community Development recently announced they will work together to assist developers in locating the properties that could be used for affordable housing projects. However, the department continues to be scrutinized for the properties it holds but does not utilize.

Further, AB 443 (Wolk), Chapter 9, Statutes of 2007, allows CHP to headquarter outside of Sacramento. One of the considerations is West Sacramento, which, according to CHP, would enable it to realize more effective costs by consolidating its operations in a single location near its training center.

14. What role does DGS play in identifying and coordinating surplus property sales?

The DGS oversees the annual process of identifying State-owned real property that has been determined to be excess to the programmatic needs of the owning State agency. The following is a discussion of the efforts undertaken by the DGS.

Annual Surplus Property Process

All agencies, departments, boards, and commissions are required to review their current and anticipated programmatic needs for the property that they occupy or have under their jurisdiction, and identify and report any excess property to the DGS by December 31 of each year.

The DGS performs a preliminary due diligence review of the excess properties identified in conjunction with the owning departments. In addition, the DGS notifies other State agencies of the availability of the reported excess properties. State agencies then have 60 days to notify the DGS of their interest in a property identified as excess. If no agency notifies the DGS of an interest in the properties, upon agreement with the owning department, the properties are included into the DGS' Annual Surplus Property Omnibus Bill.

Upon enactment of the Annual Surplus Property Omnibus Bill, the director of the DGS is authorized to proceed with the disposition of the properties. Local government agencies, including cities, counties, school districts, and special districts within the jurisdiction of the properties, are notified of their availability. They have 60 days to respond in writing that they are interested in the property, identify their proposed use for the property, and disclose how they will pay for the property. Local governments may acquire a property at less than full market value if the end purpose is for an affordable housing, park and recreation, or open space use. If no local government entity expresses interest in acquiring a property, the property is then made available to private buyers.

Surplus Local Government Property Coordination

The DGS also periodically receives notification from local government agencies, including cities, counties, school districts and special districts, of their intent to dispose of property. Following this notification, the DGS determines if the property meets the needs of a State agency. If a potential match is identified, the DGS works with the interested agency.

BSA Follow-up Reports

BSA issued a report in 2005 titled "Department of General Services: Opportunities Exist Within the Office of Fleet Management to Reduce Costs." This was produced in response to a Joint Legislative Audit Committee request for BSA to determine whether Fleet Administration has a process in place to measure the cost-effectiveness of its garages and fleet of rental vehicles, and, to the extent possible, determine whether it is cost-effective for the state to own and operate its garages. BSA produced a follow-up to this report in May 2007. While it commended DGS for some progress, it had further recommendations.

For example, in response to the bureau's initial findings that the DGS does not adequately monitor its garages' cost-effectiveness, the DGS began capturing the relevant financial data necessary to do so in January 2006. However, in its follow-up report, BSA found that the DGS was not using the information effectively. In fact, the manager in charge was unaware that two garage facilities were operating at a deficit of over \$1 million.

BSA also issued a follow-up to its 2005 report, "Pharmaceuticals: State Departments That Purchase Prescription Drugs Can Further Refine Their Cost Savings Strategies." The report notes that DGS has yet to fully act on several recommendations that will result in higher savings. These include:

- *Reviewing therapeutic categories based on four criteria (patient safety, efficacy, high quality, and best value) to determine whether departments are purchasing drugs outside the formulary*
 - *Completing a database that will allow the DGS to analyze data from departments participating in the state's bulk purchasing program*
15. *BSA noted that, although DGS has attempted several times to reconcile the costs of maintaining its own motor pool as compared to commercial rental companies, it still has not been able to produce a viable evaluation. When will DGS have this analysis completed?*

While the DGS is continuing to improve the cost accounting system used to monitor the financial operations of the motor pool, sufficient information was available by the 2006 calendar year to allow a consulting firm to study the cost effectiveness of the DGS Office of Fleet and Asset Management's (Fleet) service activities. As part of that review, the consultant compared Fleet's short-term rental costs for motor pool vehicles to those available from the State's primary commercial rental car vendor. In December 2006, the consultant concluded that the State saves approximately 17 percent when using the DGS - Fleet vehicles, rather than the State's primary rental car vendor to provide short-term vehicles.

During a May 2007 follow-up review to its July 2005 audit, the BSA included an examination of the consultant's cost-effectiveness review. In brief, BSA indicated that the analysis performed by the consultant was an improvement over prior analyses of cost effectiveness; however, the consultant reported certain limitations to its 17 percent savings calculation that were cause for concern to the BSA. BSA's primary concern was that the rental car data used by the consultant in conducting its cost analysis did not include the vehicle type.

While there are differing perspectives between the consultant and the BSA as to if sufficient data existed to support the consultant's conclusion that Fleet's short-term vehicle rental program results in significant savings to the State, at a minimum, the results of the consultant's review confirm previous DGS - Fleet analyses which found that the DGS is providing competitive daily rental car services resulting in savings to agencies.

It should be also be noted that the DGS' objective is to have a system in place that allows the continual monitoring of Fleet operation cost-effectiveness by management personnel. Toward that end, recently, a new manager for Fleet's administrative operations was hired who has a strong fiscal and budget background. As part of his duties, the manager has been tasked with ensuring that sufficient data is available to allow management to continually evaluate the cost-

effectiveness of maintaining its own motor pool as compared to commercial rental companies.

In the past, Fleet revenues and costs were tracked on a statewide basis which made it difficult to accurately calculate the cost effectiveness of a specific DGS garage facility. Beginning in 2007-08, revenues and expenditures are being tracked to the individual garage, which allows the DGS-Fleet to accurately calculate the cost effectiveness of individual garages.

Table "A" below shows total Fleet revenues and expenditures for the past three fiscal years along with the year-end balance. It also shows that the DGS - Fleet has been able to recover the cost of maintaining its fleet of vehicles. In addition, the DGS - Fleet is currently implementing a new Fleet Asset Management System (FAMS) that will provide additional data for all State vehicles.

Table A

	2005-06	2006-07	2007-08*
Fleet Revenues	\$49,067,507	\$52,854,478	\$53,791,268
Fleet Expenditures	\$49,026,313	\$50,345,619	\$52,480,577
Ending Balance	\$41,194	\$2,508,859	\$1,310,691

*Projected

16. *What is the status of the recommendations issued from the pharmaceutical report?*

On January 18, 2008, the BSA issued Report No. 2007-041 titled "*Recommendations Not Fully Implemented After One Year.*" The BSA reported that two of the five recommendations from its May 2005 pharmaceutical report had, based on an update provided by the DGS to BSA in August 2007, not yet been fully implemented. As discussed below, the two recommendations have now been fully implemented.

Recommendation – Facilitate the development of guidelines relating to departments' adherence to the statewide formulary.

Status: This recommendation was fully implemented on November 21, 2007. On that date, the Common Drug Formulary Committee adopted guidelines, policies and procedures drafted by the DGS governing the administration and enforcement of the Common Drug Formulary.

Recommendation – Ensure notification of the volume, type, and price of prescription drugs purchased outside the bulk-purchasing program.

Status: During a June 2007 follow-up review to its May 2005 audit, the BSA found that the DGS had addressed its primary recommended action by requiring departments that participate in the bulk purchasing program to provide the Procurement Division with detailed information on prescription drugs purchased outside of the program. However, BSA expressed concerns that the Procurement Division had not also developed a more formal process to analyze and use the information included in the quarterly reports. Of specific concern was the lack of a database to assist in the analysis of reported information and a lack of report instructions being disseminated to departments. These outstanding issues have been fully addressed through the November 2007 implementation of a new database to capture non-contract drug purchases and a January 29, 2008 notification to departments of additional reporting instructions.

Thank you again for the opportunity to share this information with you. It is an honor to have been appointed as the Director of the Department of General Services. I look forward to working with you and other members of the Legislature as we serve the people of the State of California; a role I have done for more than 33 years. I am committed to deploying best practices within California State government and making DGS one of the best run organizations within the State.

Please let me know if you have any questions or want to meet to discuss any issue related to the Department.

Sincerely,

A handwritten signature in black ink, appearing to read 'Will Bush', with a stylized, flowing script.

WILL BUSH
Director, Department of General Services

590-R

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MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR GIL CEDILLO

SENATOR ROBERT DUTTON

SENATOR ALEX PADILLA

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Appointments Consultant

BILL BAILEY, Consultant to SENATOR BATTIN

DAN SAVAGE, Consultant to SENATOR CEDILLO

CHRIS BURNS, Consultant to SENATOR DUTTON

BILL MABIE, Consultant to SENATOR PADILLA

ALSO PRESENT

JOSEPH D. COMPTON, Commissioner
Juvenile Parole Board

MARK B. HORTON, M.D., Public Health Officer
State Department of Public Health

ERIC HANDLAR, M.D., County Health Officer
Orange County
California Conference of Local Health Officers

JUDITH REIGEL
County Health Executives Association of California

JIM HUNT, Director
Prevent Child Abuse California

HAROLD GOLDSTEIN, M.D., Executive Director
California Center for Public Health Advocacy

CARL LONDON
AFSCME, Local 2620

AMANDA LEVY
California Psychological Association



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Statements by Appointees Not Required to
Appear, Members of the Pacific States
Marine Fisheries Commission: L.B. BOYDSTUN,
THOMAS HARMAN, and JOHN W. McCAMMAN



--ooOoo--

CHAIRMAN PERATA: Mr. Compton, come right up. In spite of the disarray, we're okay. We can take care of you.

You're with the Board of Parole Hearings.

Why don't you just start. You know why you're here.

MR. COMPTON: Yes.

I have my aunt and uncle, long-time residents of Carmichael, here today to support me.

CHAIRMAN PERATA: Welcome.

MR. COMPTON: So, Chairman Perata, Senators, Senate staff members, good afternoon. My name is Joe Compton.

First of all, I want to thank you for the opportunity to come before you again, seeking your support in my reappointment as a Commissioner on the Department of Juvenile Justice Parole Board. In my original appointment, I had asked for the opportunity to put the experience I had acquired in over 20 years of working in county corrections to use as a DJJ Commissioner.

CHAIRMAN PERATA: Excuse me, Mr. Compton. I just have an announcement to make.

At the request of the Governor, Tomas Martinez, Member of the Parole Board, will not be heard today. So, if anybody came all the way for that, sorry.

We now have a quorum.

Please continue.

MR. COMPTON: I spoke at that time of hoping to

1 end my career working in an organization that placed
2 rehabilitation over punishment, success over failure. I can
3 honestly say today, it is my sincere opinion that the California
4 Department of Juvenile Justice is such an organization.

5 On my first appointment, I was not certain I
6 would seek a second. It is not an easy position. The decisions
7 are difficult, and the consequences are great.

8 It is the positive changes that have taken place
9 within the department, positive changes that are just on the
10 horizon, and my belief that I can make a contribution to that
11 effort that compels me to seek a second term.

12 I thank you again for your time in considering my
13 appointment, and will be happy to answer any questions at this
14 time.

15 CHAIRMAN PERATA: Thank you.

16 You've been there for a while now. Do you have
17 any ongoing training that you're given?

18 MR. COMPTON: We have monthly meetings and
19 trainings. And then, sometimes additional training beyond
20 that.

21 CHAIRMAN PERATA: What kinds of things do you do
22 when you're being trained? What do they train you to do?

23 MR. COMPTON: Oh, training on some of the new
24 programs that they're going to be initiating. The risk
25 assessment that -- that is soon going to be put into use in the
26 department. Some of the mental health programs that they've --
27 they've initiated. Training as far as we have an opportunity to
28 talk to field parole.

1 CHAIRMAN PERATA: Do you get a chance to get into
2 the facilities to check them out?

3 MR. COMPTON: We have an opportunity to go into
4 the facilities during our hearings. And then, several of our --
5 our training sessions have been held in the facilities where
6 we've met with the facility superintendents, as well as had the
7 opportunity to talk to wards, and kind of answer some of their
8 questions and concerns that they may have had.

9 CHAIRMAN PERATA: Are they candid?

10 MR. COMPTON: I believe they are. It's a -- it's
11 a very good dialogue.

12 CHAIRMAN PERATA: Any questions?

13 SENATOR BATTIN: I met with Mr. Compton this
14 morning and I'm fine.

15 I'll be happy to move the confirmation.

16 CHAIRMAN PERATA: Okay.

17 Anybody here to speak in favor? Anybody opposed?
18 We have a motion to approve, call the roll,
19 please.

20 SECRETARY WEBB: Padilla.

21 SENATOR PADILLA: Aye.

22 SECRETARY WEBB: Padilla Aye. Battin.

23 SENATOR BATTIN: Aye.

24 SECRETARY WEBB: Battin Aye. Perata.

25 CHAIRMAN PERATA: Aye.

26 SECRETARY WEBB: Perata Aye. Three to zero.

27 CHAIRMAN PERATA: We'll leave the roll open, but
28 congratulations.

1 Also, this is the fastest we've ever done this.
2 SENATOR BATTIN: I think you've set a record.
3 MR. COMPTON: I appreciate that. Thank you.
4 CHAIRMAN PERATA: Thank you. Take your aunt and
5 uncle out for lunch.

6 [Thereafter, SENATORS CEDILLO
7 and PADILLA voted Aye, making
8 the final vote 5-0.]

9 CHAIRMAN PERATA: Next, Dr. Horton, Public Health
10 Officer.

11 Dr. Horton, welcome.

12 DR. HORTON: Good afternoon. Thank you.

13 CHAIRMAN PERATA: Do you have any family?

14 DR. HORTON: I do. My wife is with me, Mary Ann
15 Miller.

16 CHAIRMAN PERATA: Welcome.

17 Why don't you go ahead and open.

18 DR. HORTON: Thank you.

19 Chairman and other Members, I really appreciate
20 the opportunity to come before you for this confirmation
21 hearing. I look forward to its outcome.

22 I'm Dr. Mark Horton. I'm the Director of the
23 Department of Public Health. I'm the State Public Health
24 Officer.

25 Let me tell you just a bit about myself. I was
26 a native of St. Louis, undergraduate in Medical School at
27 St. Louis University. Pediatric training at Northwestern and
28 Duke Universities. Public Health degree from the University of

1 North Carolina. Spent about 15 years in pediatric practice in a
2 couple of -- number of different venues. Had academic positions
3 at the University of Creighton and University of Nebraska.

4 Spent two years in the National Health Service
5 Corps, and spent about nine years practicing in a hospital-
6 based private practice, and I also spent a couple of years in
7 hospital administration.

8 I was Health Director for the State of Nebraska
9 for five-and-a-half years under Governor, now Senator, Ben
10 Nelson. I've spent six years as the local health officer here
11 in Orange County, California.

12 Two-and-a-half years ago, I joined the state as
13 State Public Health Officer and Chief Deputy over Public Health
14 Programs in the Department of Health Services, and for the last
15 nine months, have served as the Director of the Department of
16 Public Health.

17 CHAIRMAN PERATA: I'm tired just hearing.

18 [Laughter.]

19 DR. HORTON: Just to give you a little bit about
20 myself.

21 Really, why I'm here in terms of why this is the
22 right job for me really focuses on three things. It's about
23 public service, it's about public health, and it's about
24 opportunities flowing there from.

25 The public service thing is complementing my
26 career, a good part of which was spent in helping people, one at
27 a time, is the opportunity to deal in the public service sector,
28 where we can have an impact on the welfare, well being of a lot

1 of persons. So, it's about the opportunity in public service,
2 and it's also about the accountability, being good stewards of
3 public resources, and holding those resources accountable.

4 Secondly, it's about public health. I'm am just
5 so proud to be part of that huge, long-standing and successful
6 tradition of public health successes over the last century that
7 have been the main factors involved in improving the quality and
8 longevity of life. We're talking about the successes in
9 immunization, in tobacco control, in food and water safety, and
10 those types of things. I'm just so proud to be part of that and
11 want to continue that tradition in my -- my particular career.

12 So, it's for those reasons that I really want to
13 be here. Also, I have very much engaged in my last two
14 appointments in running large organizations, and I am really
15 excited about the challenges of running a large organization.
16 It's about giving the vision and strategic direction to it, to
17 an organization, to providing the kind of motivation and
18 optimism that you can really make something happen with a large
19 organization. It's about holding organizations accountable and
20 giving them performance standards, and I enjoy those parts.

21 So, a combination of the commitment and passion
22 about public service and public health and running large
23 organizations is why I think this is the right job for me.

24 CHAIRMAN PERATA: Thank you.

25 I want to center your attention on one of the
26 things you had mentioned in the scope of responsibility, that's
27 water, drinking water. And whether or not we're ever going to
28 have enough water is for another committee, but assuming we do,

1 there is a great interest in the quality of the water that
2 people drink and ingest.

3 There's been a lot in the news over the last I
4 don't know how long about hormones in water, pharmaceuticals,
5 even the soaps that you use, detergents, that are antibacterial
6 have now been questioned about the effect it has on the drinking
7 water.

8 One of the responsibilities you have is to adopt
9 regulations for monitoring contaminants. Maybe you can tell us
10 where we are just generally in water, and things that you're
11 working on specifically since you got here?

12 DR. HORTON: Well, the drinking water program, of
13 course, has broad responsibilities. We -- we are responsible
14 for, I think, over 3,000 water systems across the state.

15 We take a tiered approach toward oversight,
16 overseeing the quality of the -- of the programs within those
17 programs and the fee structure there -- thereby. We -- we
18 regulate those on a tiered basis, based on a risk-based approach
19 toward inspections, such that public water systems that use
20 surface waters, those waters that come out of rivers and lakes,
21 are the highest priority, and we inspect those on a more regular
22 basis.

23 Those that come from groundwater requiring
24 treatment are our second highest priority, and we inspect those
25 on an every two-year basis.

26 The most pure form of water in our state, that
27 which comes from groundwater not requiring treatment, are
28 inspected on an every three-year basis. We do that.

1 So, we are in regular contact with those water
2 purveyors that are responsible for delivering clean water to the
3 system.

4 In many cases, we work through local
5 jurisdictions, those very small public water systems that have
6 less than 200 connections. There are 33 counties that have sort
7 of delegated responsibility for overseeing them, but we once
8 again work very, very closely with them.

9 Senator, you mentioned specifically about
10 pharmaceuticals and other unregulated contaminants that are
11 showing up in water supplies right now. That is a very
12 difficult issue for us here and nationally, because we have a
13 very complex system of developing, for example, even the
14 laboratory methodology to be able to correctly characterize
15 those contaminants in water, and then assessing in a realistic
16 way, in a scientific based way, the true health effects of
17 having those contaminants in the water.

18 Right now, there are no regulations in place to
19 oversee that, but one step that we're taking in public health,
20 we are responsible for licensing recycled water projects in the
21 state. Currently, we are requiring licensees to develop
22 methodologies to be able to monitor various nonregulated
23 contaminants that may show up in their water. So, we feel like
24 we're pushing the envelope through our -- our empowerment,
25 through what we can include in licenses.

26 CHAIRMAN PERATA: That's gray water, the recycled
27 water?

28 DR. HORTON: Recycled water is -- it usually

1 includes a range of things which can include gray water, but
2 even further, treated water that can used for environmental
3 uses, and in some cases and under certain circumstances, is now
4 being considered for being blended into public water supplies.

5 CHAIRMAN PERATA: For places like Los Angeles,
6 that's good.

7 DR. HORTON: Yeah, Orange County is another
8 example, a major project moving forward.

9 CHAIRMAN PERATA: Inland Empire, you might want
10 to let do that.

11 DR. HORTON: We may.

12 CHAIRMAN PERATA: Require far less water if we do
13 that. Chino.

14 Bottled water, do you have any jurisdiction over
15 bottled water?

16 DR. HORTON: Yes, we do, but interestingly
17 enough, it is in our food safety branch rather than in the
18 drinking water program.

19 So yes, we do regulate the purveyors of bottled
20 water.

21 CHAIRMAN PERATA: What kind of regulation? What
22 do you look for?

23 DR. HORTON: Well, we had -- we have regulations
24 for inspections of the machinery that's put in place to deliver
25 water. So, we go around regularly and inspect those and ensure
26 that they are in compliance with regulations as to how those
27 bottled water systems are set up to deliver water to the public.

28 CHAIRMAN PERATA: Since a lot of water now comes

1 from Fiji, and France, and Italy, Mexico, do you test,
2 periodically test, imported waters?

3 DR. HORTON: I do not know the answer to that
4 question. A very good question. I'll find out that answer and
5 get back to you on that.

6 CHAIRMAN PERATA: I'd appreciate it.

7 Do you make any judgments about, you know, some
8 of it's purified, some of it's spring water, some of it's
9 imagination? It's kind of like buyer beware?

10 DR. HORTON: Our main concern, of course, is that
11 they meet the safe drinking water requirements. In other words,
12 they're tested on a regular basis.

13 CHAIRMAN PERATA: So, that's what it is.

14 DR. HORTON: Exactly, right.

15 CHAIRMAN PERATA: Thank you.

16 Mr. Padilla.

17 SENATOR PADILLA: Thank you, Mr. Pro Tem.

18 I have a couple follow-up questions on the water
19 piece.

20 But first and foremost, I wanted to follow-up on
21 a conversation that we had in my office regarding the obesity
22 crisis in California. It was the subject of a select committee
23 hearing we held a couple months ago. I don't want to replay
24 that entire hearing, but obviously the obesity crisis in
25 California is very real. There was not just an Obesity Summit
26 sponsored by the Governor but a task force convened, and an
27 obesity prevention plan that was issued more than a year ago.

28 The hearing itself focused on the status of

1 implementation of numerous recommendations in that report, or
2 the lack thereof, in many, many instances.

3 But I guess for the record, as part of your
4 confirmation hearing today, my question to you would be, what
5 level of commitment can we expect from you, should you be
6 confirmed, on the aggressive implementation of the
7 recommendations in the Obesity Prevention Plan?

8 DR. HORTON: I can be very categorical about
9 this. This will be a very high priority for me. It has been
10 for the Governor, and when I am talking with my staff, when I am
11 leading our strategic planning efforts, as far as I'm concerned
12 right now, obesity is considered public health challenge number
13 one for us and will continue to be.

14 Let me talk a little bit about the plan, and what
15 we've done with it.

16 First of all, it was -- it came out before the
17 Governor put forth his plan for health care reform. And one of
18 the things we did, in fact, focused enormous amount of our
19 efforts over the past year or so, in ensuring that the
20 Governor's prevention and wellness component included the major
21 components that were laid out in the Obesity Prevention Plan so
22 we'll be very successful in incorporating the various components
23 of the plan in the Governor's prevention and wellness component.
24 Obviously -- of his health care reform.

25 Obviously, that -- that did not go forward. So,
26 let me delineate some of the other steps we are taking and will
27 continue to take moving in forward with that plan.

28 One of the main goals of that plan was to

1 strengthen state capacity for leadership and coordination. We
2 have established a coordinating Office for Obesity Prevention
3 within the Department of Public Health, and we have gathered
4 together the best minds across the department into an obesity
5 prevention group that will ensure that there is good
6 coordination across the department in developing consolidated
7 approaches toward that.

8 Also as part of that leadership, state leadership
9 thing, we will be -- we will be reinvigorating the Get Healthy
10 California Work Group that the Governor pulled together as a
11 result of his summit some three years ago now. And we will be
12 recharging that group to follow up on the commitments of
13 significance that were made in the original work group and give
14 it a new charge to ensure good coordination across state
15 agencies in dealing with the issue of obesity as we move
16 forward.

17 With regard to local support, we are -- we have
18 gotten a grant through the Public Health Institute from the
19 California Endowment to begin to develop the model that local
20 jurisdictions could use in putting together what I call obesity-
21 free communities, plans, to involve all the partners that need
22 to be involved in a comprehensive plan at the community level.

23 Thirdly, there was a part of the plan that dealt
24 with a public awareness campaign. What we are doing to move
25 that agenda forward is the use of the best resources we have
26 available in the department to -- to communicate to the public
27 more effectively. Specifically, through our Network for a
28 Healthier California, we have considerable resources available

1 to us. Within the past year, we have launched what is called
2 the Champions for Change, a public awareness campaign that's
3 really emphasizing empowering parents to make critical choices
4 for -- in nutrition and physical activity in the home.

5 Secondly, the WIC program, you may remember or
6 may know that the federal government has changed the guidelines
7 for the food package that it's made available through the WIC
8 program, emphasizing more fruits and vegetables. They will be
9 making a major launch -- we will be making a major launch of
10 that new food package in the coming months that we think will
11 make -- have a very -- will move very much forward our ability
12 to communicate with the public, and in fact create a lot of
13 opportunities for local communities to develop their capacity to
14 deliver fruits and vegetables.

15 And then finally, part of the plan was to develop
16 a better tracking and evaluation scheme. Once again, we
17 applying for a major grant from the Centers for Disease Control
18 that would provide us the resources to provide much more robust
19 tracking. So, we think we're taking some very, very positive
20 steps.

21 To answer your basic question, you can count on
22 me as the State Health Officer, to continue this to be a major
23 focus of my -- my tenure here and the department.

24 SENATOR PADILLA: I appreciate that.

25 A couple quick follow-up questions. The obesity
26 prevention group, has it convened already?

27 DR. HORTON: It has actually been convened and
28 it's been operative for the past two years within the

1 department.

2 SENATOR PADILLA: How often does that meet?

3 DR. HORTON: I can't exactly tell you the
4 periodicity, but it usually meets at least every several months.

5 SENATOR PADILLA: At least every several months
6 for two years. So, maybe six times?

7 DR. HORTON: That would be a reasonable estimate.

8 SENATOR PADILLA: And this Get Healthy California
9 work group, has that met again since the hearing?

10 DR. HORTON: No, it hasn't. We are once again --
11 we are formulating the ground rules, me and my staff, for
12 reinvigorating that and remeeting that, but we will be
13 announcing plans to reconvene that group in the near future.

14 SENATOR PADILLA: I appreciate the commitment I
15 hear from you. But similar to the hearing we had a couple
16 months ago now, where we hear a lot of, "We have this program in
17 the works," or, "We have this in initiative almost ready to
18 launch," you know, we're recommitting these groups that don't
19 meet frequently, in my opinion.

20 We hear a lot of great things about California's
21 talk about being a leader, but not action or leadership action
22 being taken. That's sort of the bottom line of what I'm looking
23 for today.

24 The positions that you've taken, you're saying
25 the right things; you want to do the right things. But at the
26 end of the day, not just the Legislature, but I think the
27 Governor would be the first to say he wants not just action,
28 action, action, but results, results, results.

1 DR. HORTON: I agree.

2 SENATOR PADILLA: And what we hear far too often
3 as answers to our questions is, we're working on it, or we will
4 meet, or we're still in preparations. That's not action, and
5 it's certainly not results.

6 Not to dwell on one of the 50-some-odd
7 recommendations of the Obesity Prevention Plan, but you know
8 full well how important this menu labeling concept is for me.
9 It was a bill that was approved by the Legislature last year,
10 both the Senate and the Assembly. The Governor vetoed the bill,
11 and he said in his veto message that the bill was unworkable,
12 and he had concerns about implementation.

13 In the meantime, I think you're very well aware
14 that the City of New York disagreed with that, and not only
15 passed a local menu labeling ordinance, very similar to the
16 version of the bill that the Governor had on his desk last fall,
17 but one that has been challenged in court and held up in court.

18 So, for the Governor, for your benefit, and for
19 industry folks to continue to say that maybe menu labeling just
20 isn't workable, I want to hand this to you. It's not just
21 Subway or Quiznos any more. Here's Starbucks in New York City,
22 implementing menu labeling.

23 For all the hoopla, all the concerns about, well,
24 we don't know how it would work, or we don't know how to make it
25 work, and it's not implementable, here we are, the State of
26 California, the most populous state in the nation, arguably the
27 biggest state in terms of the impact of obesity and its health
28 consequences, and yet we had the opportunity to be first, and we

1 missed that opportunity.

2 A city across the country is not just talking
3 about it; they're doing it. And restaurants in New York, some
4 of the big national chains that we see here in California are,
5 in fact, today beginning to implement menu labeling.

6 So, I look forward to continuing to work with you
7 if you're confirmed today on making menu labeling in California
8 a reality, not just a goal and not just talk.

9 I'd appreciate any other comments you have on
10 menu labeling.

11 DR. HORTON: Clearly, Senator, the concept of
12 menu labeling is -- is a good concept. I mean, we are all for
13 doing everything we can, or as many things as we can reasonably
14 to ensure that parents and the citizens have the information
15 they need to make the correct decisions about their nutrition.
16 No question about it.

17 As with any policy approach, the devil's in the
18 details. When the Governor vetoed the bill based on its
19 workability, I think he was referring to specifics that are
20 involved. For example, which restaurants should be regulated?
21 Which menu items in particular restaurants should be regulated?
22 What information should be published? Should it just be
23 calories, or should it be a menu of other items?

24 So, there are a lot of different details that
25 need to be addressed. I think it's a matter of ensuring that
26 there is the right and workable cluster of requirements through
27 that bill.

28 What you can count on here is that I will provide

1 you and the Legislature the appropriate technical assistance you
2 need to get things correct. And you can count on me, as the
3 Public Health Officer, to put the best public health case
4 forward to the Governor's Office.

5 SENATOR PADILLA: And I certainly appreciate and
6 look forward to working with you on that.

7 I want to also pick up on an issue that's been
8 brought to my attention by a number of my colleagues in regards
9 to some of your predecessors' commitments and reports to this
10 Rules Committee on the timeframe for regulations regarding the
11 role of psychologists in state health facilities.

12 As you know, it's been sometime since AB 947.
13 Previous Rules Committee hearings have asked, posed the question
14 of what the status is of regulations being set. And here we
15 are, ten almost twenty years from the time that it was supposed
16 to be done, and it doesn't seem to be done.

17 Do you have a status report for us today?

18 DR. HORTON: Yes, I do. And I'm very happy to
19 report I met with the advocates of that and the professionals
20 that were stakeholders in that group last January. I committed
21 to them that I would do everything I could to expedite the
22 process, knowing that it had been frankly embarrassingly long
23 since the legislation was passed.

24 We have been successful in moving that package
25 forward. I was informed just this week that it will be moving
26 soon out of our Office of Regulations to the Office for
27 Administrative Law, which will allow for those -- those to go
28 open for public comment. We think that's going to be done

1 within -- what is this, the 30th of April -- we think it will be
2 done by the end of next month for a 45-day comment period.

3 I think this opens up the very real possibility
4 that these regulations could be in place by the end of this
5 calendar year. So, we are -- we're taking definite action to
6 move forward.

7 SENATOR PADILLA: Coming from you, I have a
8 little bit more confidence in that. If we're a little bit
9 cynical, let me share with you why.

10 Predecessors have reported this Committee that
11 this should be able to happen within two or three weeks, and
12 this was back in August of 2004.

13 So, I certainly do hope that we bring that to
14 closure.

15 DR. HORTON: It has been brought to my attention,
16 and I will be paying personal attention to this package moving
17 through.

18 SENATOR PADILLA: By the end of the year.

19 Senator Perata had a series of questions
20 regarding water, another item which you and I discussed in my
21 office today. So, I would love to get your comments on the
22 record specifically as it pertains to the regulation and
23 standard setting for the use of recycled water in California.
24 As it currently stands, standards are set by the regional water
25 boards, of which there are nine throughout the state, and
26 therefore nine variations of standards for the use of recycled
27 water in the state.

28 It would seem to me, as the Director of Public

1 Health, and you're setting the standards and quality standards
2 for other sources of drinking water, that if we're to encourage
3 and facilitate the use of recycled water as part of our water
4 supply, as by the way the Legislature and the Governor have
5 stated a goal for increasing that by the year 2020, that you
6 ought to have a role in those standards being set.

7 I would also imagine that by putting the
8 Department of the Public Health sort of in the driver's seat of
9 setting those standards, that we're recognizing recycled water
10 as an important water supply, and not treating it as we
11 currently do, which assumes that it's just waste, and we have to
12 make sure it meets certain standards before we ship it out to
13 the ocean.

14 Would you agree with that? And what role or
15 capacity would you envision yourself as the Public Health
16 Officer --

17 DR. HORTON: Absolutely, the Department --

18 SENATOR PADILLA: -- in this discussion?

19 DR. HORTON: -- of Health absolutely needs to be
20 involved in any time that it's anticipated that recycled water
21 would be in any way blended in and be available for drinking
22 water. That is our appropriate aegis.

23 Several important steps we have taken that --
24 there already are a set of guidelines, water quality guidelines,
25 related to -- to recycled water in -- in regulation at this
26 time.

27 Secondly, referring to the Regional Water
28 Quality Control Boards, we have put a Memorandum of

1 Understanding in place between the State Water Resources Control
2 Board and the nine water quality control boards regarding the
3 use of recycled water to ensure that there's consistency across
4 the nine regions on the approach we're taking to recycled water.

5 And then finally, we are in the process of
6 developing regulations specifically relating to the use of
7 recycled water to -- in groundwater discharge.

8 So, we are -- we definitely feel that's our aegis
9 and feel like we've taken some definite steps to ensure that the
10 use of recycled water, insofar as it relates to drinking water,
11 is done properly.

12 SENATOR PADILLA: And there's certainly a lot of
13 education and public awareness that needs to be done --

14 DR. HORTON: Absolutely.

15 SENATOR PADILLA: -- in this regard, which leads
16 me to sort of the last subject matter of my questioning. That's
17 your public affairs or public education unit.

18 I assume you have one. How many staff members?
19 Is there a budget item that is dedicated to public information?

20 DR. HORTON: Absolutely. We, as part of the
21 reorganization that we undertook when we created the new
22 Department of Public Health, I established a new Office of
23 External Affairs. The idea was that all of our resources that
24 we have available to interact with key partners, including
25 yourselves as Legislators, that we put under the aegis of that
26 External Affairs Office.

27 We have under that office, our Office of Public
28 Affairs, which includes our Public Information Officer and

1 several other staff, our Legislative and Governmental Affairs
2 Office, that also has several staff, but also includes as a
3 critical mass staff relating to other key offices, like our
4 Office of Women's Health, our Office of Multicultural Health,
5 our Office of Binational Border Health.

6 So, we have -- feel like we've consolidated a lot
7 of strength and capacity in that office to improve our -- our
8 communication capability with all of our external stakeholders
9 and the public.

10 SENATOR PADILLA: So, who within that structure
11 you just described is responsible for being responsive to the
12 media or press inquiries?

13 DR. HORTON: The Office of Public Affairs and our
14 Public Information Officer.

15 SENATOR PADILLA: Since you've assumed this
16 position, any concerns about the effectiveness, or the
17 efficiency, or the responsiveness of those individuals?

18 DR. HORTON: We feel like we're incredibly
19 responsible to the public and to the media.

20 It is a huge task. We get hundreds of calls
21 everyday from the public. We feel, though, in spite of that --
22 that major crush of work, which is variable with the issues that
23 come up, we think we've done a very good job. And I think the
24 media in general would testify to that.

25 SENATOR PADILLA: I think we'd all agree that
26 it's certainly a critical function.

27 DR. HORTON: Absolutely.

28 SENATOR PADILLA: Particularly in times of

1 crisis, whether it's something in the water, or what's in the
2 spinach, or anything else.

3 The media is a tremendously powerful partner in
4 disseminating important information on a timely basis.

5 I've received some complaints within my office
6 about the responsiveness of your media personnel. I would love
7 to work with you to facilitate a meeting or some how bridge that
8 gap with members of the press corps that don't feel they've been
9 responded to on a timely basis.

10 DR. HORTON: Senator, feel free to communicate
11 with me directly about those types of things, and we will be
12 happy to address those on a one-by-one basis. And if there's a
13 pattern developing, be more than happy to meet with you and talk
14 about that.

15 SENATOR PADILLA: Thank you very much.

16 DR. HORTON: You're welcome.

17 SENATOR DUTTON: Good afternoon.

18 Couple more questions regarding the regulatory
19 updating.

20 DR. HORTON: The regulations?

21 SENATOR DUTTON: Yes, regulations on the
22 updating, just a couple of areas.

23 One would be the staffing requirements for
24 nursing homes. There was an audit that said we hadn't actually
25 completed those regs yet. Are those also up to date now or in
26 the process?

27 DR. HORTON: Yes, that's correct. You're
28 referring to the regulations requiring us to change the way we

1 calculate nurse-patient responsibilities from a 3.2 hours per
2 patient type of a format to a nurse-patient ratio type of thing.

3 Those regulations were issued and are operational
4 at this time.

5 SENATOR DUTTON: How about the radiologic
6 technology school regs?

7 DR. HORTON: Those -- you're referring
8 specifically to the regulations?

9 SENATOR DUTTON: Uh-huh.

10 DR. HORTON: We rely upon a committee, the
11 Radiology Technician Coordinating Committee, I think is the name
12 of it, the RTCC. They are the committee that we rely upon to
13 put forward proposed regulations. They have subdivided their
14 work into, I think, six subcommittees, and we are actively
15 working on a set of regulations involving specifically dental --
16 radiology done in dental offices.

17 So, we are -- there is a framework in place, in
18 other words, to review and make recommendations on all
19 regulations related to radiology technicians.

20 SENATOR DUTTON: And that includes the community
21 colleges and universities that deal in --

22 DR. HORTON: Another -- separate from this, it
23 has to do with specific training programs. That may be what
24 you're referring to.

25 SENATOR DUTTON: Well, I'm actually more
26 concerned about the community college training programs.

27 DR. HORTON: Yeah. The community college issue
28 has to do with -- very frankly, it's my understanding that for

1 some years, we were not actively pursuing ensuring that schools
2 that trained and certified radiology technicians were meeting
3 regulations with regard to their curriculum compliance,
4 curriculum content, as well as the credentials of their
5 teachers.

6 We worked with the -- overall, there are over 100
7 schools, I believe, that are involved in this activity in one
8 way or another across the state. We worked with those,
9 anticipating that we were going to begin inspecting and
10 requiring compliance with those regulations. We've worked with
11 that industry for over a year and began the process a bit ago.
12 I can't remember exactly how long ago. It pre-dated my actual
13 coming to the department.

14 But nonetheless, just say it's my information
15 that today we have worked through that process, and that the
16 schools are currently in compliance with regulations.

17 There was a little wrinkle in that, in that some
18 of the schools were using some resources provided by VA
19 hospitals that were not under our direct control, so we had to
20 make specific arrangements to -- to work with the VA hospitals
21 to ensure that we could make sure that they in fact were
22 compliant with regard to curriculum content and credentials of
23 their teachers. But we feel that that is very much in order at
24 the present time.

25 SENATOR DUTTON: One of the areas of concerns
26 were, obviously, VA hospitals do provide a classroom
27 environment, or do provide on the job training for x-ray
28 technicians within our system, and they come under a federal

1 requirement.

2 DR. HORTON: Exactly.

3 SENATOR DUTTON: There seemed to be some
4 difference of opinion versus the state, which hadn't actually
5 done anything with its regs since 1982, and which really were
6 outdated even in comparison to federal standards, which were
7 actually even better or higher. But there seemed to be some
8 issue there, some duplication and some other types of things.

9 You're telling me that that's actually true. As
10 far as you know right now, those issues have been resolved
11 now?

12 DR. HORTON: The issues regarding reinstitution
13 of regular inspections and requirements of compliance with the
14 regulations is resolved.

15 I think what you're referring is efforts there
16 may be to update those regulations. And I don't know the answer
17 to that question but can get back to you, to see what -- what
18 schedule we're on in terms of looking at the regulations
19 themselves and updating them.

20 SENATOR DUTTON: Actually, I have a concern in
21 both, not just radiology programs, but also with nursing
22 programs, and what we're doing to work with the various
23 hospitals in the area and so forth.

24 I certainly don't need to create less capacity
25 for students. I need to actually encourage more students, so
26 more space.

27 DR. HORTON: Sure.

28 SENATOR DUTTON: Anyway, if you could, I'd

1 appreciate that.

2 DR. HORTON: Sure. We'll follow up on that,
3 Senator.

4 SENATOR DUTTON: Thank you.

5 And then the final area that I was concerned
6 about, or I had a question about, was regarding the Federal
7 Homeland Security funds, as far as the status on getting those
8 monies out to the counties.

9 DR. HORTON: Right, correct.

10 SENATOR DUTTON: Could you give me an update on
11 that?

12 DR. HORTON: First of all, with regard to the
13 Homeland Security, we -- the Department of Public
14 Health receives our preparedness funds specifically from ASPR,
15 the Assistant Secretary for Preparedness and Response, out of
16 the Department of Health and Human Services. Those funds go
17 primarily to hospitals. It's called the Hospital Preparedness
18 Program.

19 And the second major resource is from the
20 Centers for Disease Control for Bioterrorism Preparedness.

21 We do not get any direct funds, to my knowledge,
22 from the Office of Homeland Security.

23 We distribute roughly 70 percent of the funds
24 that we get both from the Hospital Preparedness Program as well
25 as from the Centers for Disease Control Bioterrorism
26 Preparedness grant. About 70 percent of those funds go to local
27 jurisdictions.

28 We require each one of those jurisdictions to

1 develop a work plan that needs to be approved before money can
2 flow. It is my information that about two-thirds of the
3 counties have provided appropriate work plans and are getting --
4 the money is moving out to those counties on a quarterly basis.

5 There are about a third of the counties that have
6 yet in this fiscal year to present a work plan. We are working
7 with them to get their work plans finalized so that we can move
8 funds forward.

9 But the point is that the vast majority of the
10 funds available to us are moving out on a timely basis to the
11 counties.

12 SENATOR DUTTON: What I'm referring to, I have a
13 report here that indicates that the total amount of grant
14 possibilities is like 370 million. The total award to date
15 through this fiscal year is 210 million, 56.7 percent, which
16 means we still have \$160 million available.

17 DR. HORTON: Right.

18 SENATOR DUTTON: So, I was kind of curious, is
19 there a reason that money's not getting out?

20 DR. HORTON: Maybe I was exaggerating a bit to
21 say the vast majority.

22 I guess what I'm saying once again is that we
23 require work plans from the local jurisdictions. Two-thirds of
24 the counties have provided work plans that allows us to move
25 those funds forward. Fully a third of the counties have still
26 not presented acceptable work plans that allow us to move the
27 funds forward, which is, I'm sure, the reason why there is still
28 unexpended funds that have -- that have not moved.

1 But we anticipate -- we work very, very closely
2 with the counties. I'm sure that we're working very hard to
3 help them complete acceptable work plans so that we can move
4 funds forward in this fiscal year.

5 SENATOR DUTTON: Maybe you could have somebody
6 get back to me as far as what seems to be the delay.

7 I'd hate to see something happen, and all of a
8 sudden somebody wonders how come some county wasn't equipped to
9 handle it.

10 DR. HORTON: Correct.

11 SENATOR DUTTON: And they end up telling us it's
12 because they didn't have that funding.

13 DR. HORTON: Sure.

14 SENATOR DUTTON: And we're sitting on \$160
15 million.

16 DR. HORTON: Right. And not to pass along
17 excuses, but this was an unusual year, in that each year, after
18 the fiscal year begins, or hopefully right about that time, we
19 get guidance from the federal government. This year, the
20 federal government was particularly slow in providing us the
21 guidance we needed to give direction to counties.

22 CHAIRMAN PERATA: Particularly slow.

23 [Laughter.]

24 DR. HORTON: Yeah.

25 So we -- but we will include that and other
26 possible explanations that may explain where we are and why
27 we're there.

28 SENATOR DUTTON: Okay, thank you.

1 DR. HORTON: You're very welcome, Senator.

2 SENATOR BATTIN: I just have one quick actually
3 follow-up from Senator Padilla's question.

4 You had talked about the regulations pertaining
5 to psychologists and state health care facilities. He asked you
6 about that, and you said that you were well aware of it.

7 I want more from you on that. Four years ago,
8 Senator Romero had asked that question and the appointee at the
9 time, Sandra Shewry, said that it would take two or three weeks
10 for the updated regulations to be put into place. That was four
11 years ago.

12 DR. HORTON: Correct.

13 SENATOR BATTIN: They haven't been put into
14 place, and I don't know where they're at or what's going on.

15 So, I understand you're aware of it, but since we
16 have you here, and we have a record of this, I'd like to know
17 what you're planning to do, and when we should expect something
18 to be done?

19 DR. HORTON: I'm sorry, Senator. You were
20 referring specifically to the psychology regs?

21 SENATOR BATTIN: Yes.

22 DR. HORTON: Once again, I can just reiterate
23 that we met with the stakeholders and the interested groups in
24 January. I committed then to them an expedited process.

25 And we are happy to report today that it's my
26 information that those will be moving very soon to the Office of
27 Administrative Law and will be out for public comment within
28 weeks. And that we expect that at the end of that public

1 comment period, we ought to be able to move expeditiously to put
2 those regulations in place.

3 I appreciate the fact that we've been here before
4 in terms of that, but I -- I will commit to you my personal
5 attention to this, to this reg package. It's brought to my
6 attention. I have made a commitment to help move those forward,
7 and I'll follow through with that.

8 SENATOR BATTIN: I appreciate with that.

9 I actually have the testimony from Ms. Shewry,
10 and she was pretty adamant about it was being taken care of in
11 just weeks. And now it's four years later.

12 So, I'd like you to follow up with me, please, or
13 have someone in your department follow up with me and let me
14 know what's going on as that goes on. I'd appreciate that.

15 DR. HORTON: We'll do that, Senator. I'd be
16 happy to do that.

17 SENATOR BATTIN: Thank you.

18 DR. HORTON: Thank you.

19 SENATOR CEDILLO: Same question, not to beat this
20 horse over again and again, but "very soon" and "within weeks"
21 seems to be insufficient for us.

22 Let me share with you that, as Legislators,
23 nothing frustrates us more and the people that we represent, the
24 people who elect us, than to be sent up here to go through the
25 legislative process, which has a very definite and finite
26 schedule. We have deadlines we have to meet. If we fail to
27 meet those, we don't go forward. If we aren't successful, we
28 don't get reelected.

1 Nothing frustrates us more than to come up here,
2 pass legislation, and then wait years -- now we're into almost
3 decades -- for that to be realized.

4 Unfortunately, you're here at the end, but you
5 are here. And I would ask, and I think it's within your
6 capacity given the confidence you have and the commitment you've
7 made to us, if you would give us in writing a timeline with
8 benchmarks. You state them, but very soon they should be
9 measured by a date definite and certain. "Within weeks" should
10 be measured by a date definite and certain so that there's some
11 benchmarks that we have an agreement on here.

12 It really is kind of vague for us to hear from
13 you -- not your fault; not putting the blame on you; you're here
14 at the end of the process. Sandy Shewry, a very, very honorable
15 person, a very sound public servant -- but to hear from many
16 that this is coming soon, without something we can look at.

17 We don't want to go back and search the record.
18 We should have something from you in writing that has some date
19 so that we can see the process that you're relying on.

20 And you should be able to rely on a process that
21 has definite benchmarks so that when those benchmarks aren't
22 realized, we don't have to wait until the end and another
23 opportunity to get you here and we can interview you at that
24 point.

25 DR. HORTON: Sure, sure.

26 Senator, my commitment would be to -- to do the
27 best we can in putting in writing what our reasonable
28 expectations for the completion of these regulations, realizing,

1 of course, that this is a very complex process.

2 For example, when --

3 SENATOR CEDILLO: It's an 18-year process at this
4 point.

5 It's not about complexity or the length of it.
6 It's just to have finality. If we want to run as an efficient
7 government, we have to set benchmarks. If we're not able to
8 perform, there would be reasons for that. We're reasonable
9 people.

10 I think all the Senators who have raised that
11 would want something that is exact for precisely the reason that
12 it gives us a commitment to a measurable date.

13 DR. HORTON: We will do the best we can in laying
14 out a reasonable timeline for the completion of these
15 regulations.

16 SENATOR CEDILLO: Thank you.

17 DR. HORTON: You're welcome, Senator.

18 CHAIRMAN PERATA: I have a number of questions
19 here from Senator Alquist. But in reading, them I could not
20 possibly do them justice. I don't know what half of the
21 acronyms are.

22 I would like you to make an appointment and sit
23 down and talk with her. I'll give you these questions.

24 DR. HORTON: Be happy to do that.

25 CHAIRMAN PERATA: Make a house call.

26 DR. HORTON: Senator Alquist has been a great
27 partner in working with us on regulations, particularly
28 licensing and certifications.

1 We will definitely follow through and answer her
2 questions.

3 CHAIRMAN PERATA: Thank you.

4 Anybody to speak in favor? Come right up.

5 DR. HANDLAR: Chairman Perata, Committee
6 Members, my name is Dr. Eric Handlar. I'm the County Health
7 Officer for Orange County.

8 And it's my pleasure to represent CCLHO, which
9 stands for the California Conference of Local Health Officers,
10 and demonstrate our strong support for Dr. Horton's appointment.

11 CHAIRMAN PERATA: Thank you, sir.

12 DR. HANDLAR: Thank you.

13 CHAIRMAN PERATA: That was succinct.

14 MS. REIGEL: Judith Reigel with the County
15 Health Executives Association with the County Health Directors,
16 Committee Members and Mr. Chair.

17 We're very pleased to be here today to support
18 Dr. Horton's confirmation. We feel that he's very well
19 qualified. He's served many years in leadership roles in both
20 state and local level public health agencies.

21 We believe he has a very passionate commitment to
22 all public health and improving the lives of all Californians.
23 We're really pleased that he is with us, and that California is
24 able to benefit from his expertise.

25 Thank you.

26 CHAIRMAN PERATA: Thank you.

27 MR. HUNT: Senator Perata, Senators, Jim Hunt,
28 Director of Prevent Child Abuse California, which is the state

chapter of Prevent Child Abuse America.

In a former lifetime, I also served as the Director of Health and Human Services for Sacramento County, so I know Mark from a couple of venues.

Mark is the one who got away. Before he went to work for Orange County, I interviewed him to be the Health Officer in Sacramento and offered him the job. Being a Southern Californian, he took Orange County instead, to my regret but to the benefit of Orange County and now to the state.

In my role as Director of Prevent Child Abuse California, I am delighted with the emphasis that Mark has put on the prevention of child abuse in this state, to the extent that a couple of months ago, we had the first ever statewide conference of public health injury prevention folks and child abuse professionals to see how we can blend those fields, work more closely together, and ultimately prevent child abuse in California.

Senator Padilla, thank you for your authorship of SB 825, the shaken baby syndrome bill, which I understand the department supports.

I would recommend your confirmation of Dr. Horton as your Public Health Officer and Director of the Department of Public Health.

CHAIRMAN PERATA: Thank you.

DR. GOLDSTEIN: Mr. Chair and Members, my name is Dr. Harold Goldstein. I'm the Executive Director of the California Center for Public Health Advocacy.

We, too, are in strong support of Dr. Horton's

1 appointment. In his short tenure in his temporary position, he
2 has become the public health leader here in California, and is
3 bringing the kind of commitment and vision to the new Public
4 Health Department that all of us in public health were hoping
5 that a leader in that position would do.

6 CHAIRMAN PERATA: Thank you.

7 Anyone in opposition?

8 MR. LONDON: Mr. Chairman and Members, Carl
9 London here today on behalf of Local 2620 of AFSCME.

10 I want to be very clear. We're not opposed to
11 Dr. Horton's confirmation, but did want to at least register on
12 the record a couple of concerns that have been touched on by the
13 Committee Members.

14 And I do want to start by saying, in talking to
15 Dr. Horton, I feel actually somewhat of a bond with him. We
16 share, along with Senator Dutton, a Nebraska background. I was
17 pleased to find out that Dr. Horton actually --

18 CHAIRMAN PERATA: That explains a lot, Carl.

19 [Laughter.]

20 MR. LONDON: Yes, it does. I think it does.

21 We always joked what others joked: that the "N"
22 on our football helmets is for knowledge. That's not true.

23 [Laughter.]

24 MR. LONDON: It is not true.

25 But I was pleased to find out, in fact, that Dr.
26 Horton even knew from his time there a couple of my father's
27 fraternity brothers from college, which gave me great comfort.

28 I worked on this issue relative to psychologists

1 in my prior iteration as Director of Legislative Affairs for the
2 Psychological Association. I work on it now on behalf of
3 psychologists that work in state prisons, state hospitals for
4 the mentally ill, developmental centers, and other programs and
5 agencies.

6 And I just want to say that -- I can give you
7 just a small sense of history and why we have the concern we
8 have.

9 Five bills have been passed on this subject, all
10 related to the same thing. The California Supreme Court ruled
11 on this issue. And despite all of that, the Legislature making
12 a clear statement five times, in fact the last three were very
13 reiterative of -- just designed specifically to nail the eyes of
14 the state facilities -- the regulations still are 18 years
15 overdue.

16 I know that's the case because even in the
17 reference that was cited on the regulations drafts we've seen,
18 it references the Supreme Court case itself, which was 1990. So
19 factually, it is an 18-year overdue package.

20 Obviously, Dr. Horton is not to blame for 18
21 years of slowness, and we know that.

22 I would like to point out how this plays itself
23 out, and why it's important for you as policy makers. Today, in
24 your state prisons and in the state hospitals for the mentally
25 ill, both systems are under federal court order because of poor
26 services being delivered there. They have used a severely
27 outdated model, a medicalized model, for years and years, where
28 the primary emphasis is medication not a lot else.

1 And one of the things that both of those systems
2 have in common is that they have repeatedly pointed to the Title
3 22 regulations as the reason that they've not made changes in
4 the policy in how they provide services. That's astounding.

5 What that's resulted in today, and I know you're
6 painfully aware of this, are some incredible costs.
7 Psychiatrists' salaries in state facilities are now up around
8 \$260,000 wages alone.

9 And when you read, like I did, the Sacramento
10 Bee's list of top salaried state employees, the first 10 pages
11 were -- after the PERS guys, who otherwise would work on Wall
12 Street and therefore we pay them a lot of money -- were all
13 psychiatrists. It is astounding. And we are now paying a huge
14 bill on that. I can't wait to see the PERS bubble that comes
15 with that.

16 It is a massive problem. The state could be
17 using other people to do services that clearly fall within the
18 scope of practice as defined by this Legislature over and over
19 again. And those agencies are using the regulation that this
20 department oversees as the reason for not making a change.

21 So, the original Supreme Court case came when a
22 physician Director of the Department of Health Services, after
23 legislation was passed, put in place a regulation that
24 completely contradicted the statute. That's what the Supreme
25 Court ultimately ruled on.

26 That's why we're nervous on this getting done.
27 We don't have any particular personal axe to grind. As I say,
28 Dr. Horton seems like an awfully nice guy, and anybody from my

1 home state is usually worth trusting.

2 But we want to make sure we have that concern on
3 the record, and we appreciate your attention to today.

4 CHAIRMAN PERATA: Thank you.

5 Anyone further?

6 SENATOR CEDILLO: Can we move the nomination
7 before I have to leave.

8 CHAIRMAN PERATA: Yes.

9 SENATOR BATTIN: I'll move it.

10 CHAIRMAN PERATA: Open the roll.

11 SECRETARY WEBB: Cedillo.

12 SENATOR CEDILLO: Aye.

13 SECRETARY WEBB: Cedillo Aye.

14 CHAIRMAN PERATA: Yes, please.

15 MS. LEVY: Amanda Levy on behalf the California
16 Psychological Association.

17 Again, we are not opposed to the confirmation of
18 Dr. Horton. Just wanted to concur with the statements of
19 Mr. London.

20 We do look forward to a speedy resolution and the
21 issuance of a set of comprehensive regulations in the next
22 month, and then speedy resolution of the this issue by the end
23 of the year.

24 Thank you.

25 CHAIRMAN PERATA: Thank you.

26 I have one other question. How would you feel
27 about having the low-level waste stuff go to the EPA rather than
28 your department?

1 DR. HORTON: First of all, we're certainly always
2 willing to engage in conversations on how better to organize and
3 oversee things.

4 I would remind the Committee, however, that the
5 Low-level Radioactive Waste Program is -- we currently regulate
6 primarily the handlers of radioactive materials that are
7 produced by medical facilities and industry, the medical being a
8 large part of -- part of our business.

9 We feel that there is a great -- we've built up
10 great credibility with the medical community as a public health
11 department in regulating that. So, I would be very concerned
12 about breaking that credibility and moving it out of the Public
13 Health Department for that reason.

14 That's my personal opinion.

15 CHAIRMAN PERATA: That's good. I was going to
16 ask how Governor felt about it, but I'll forego that right now.

17 Any further comments or questions.

18 DR. HORTON: I'm done, thank you.

19 CHAIRMAN PERATA: Call the roll, please.

20 SECRETARY WEBB: Dutton.

21 SENATOR DUTTON: Aye.

22 SECRETARY WEBB: Dutton Aye. Padilla.

23 SENATOR PADILLA: Aye.

24 SECRETARY WEBB: Padilla Aye. Battin.

25 SENATOR BATTIN: Aye.

26 SECRETARY WEBB: Battin Aye. Perata.

27 CHAIRMAN PERATA: Aye.

28 SECRETARY WEBB: Perata Aye. Five to zero.

1 CHAIRMAN PERATA: Five-zero, congratulations.

2 DR. HORTON: Thank you very much. Thank you,

3 Senators.

4 [Thereupon this portion of the
5 Senate Rules Committee hearing
6 was terminated at approximately
7 2:30 P.M.]

8 --ooOoo--

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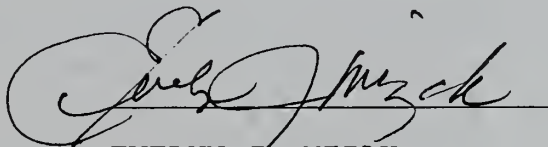
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of May, 2008.


EVELYN J. MIZAK
Shorthand Reporter

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APPENDIX

Senate Confirmation
Joseph D. Compton
Commissioner, Juvenile Parole Board
Responses to Senate Rules Committee Questions
April 17, 2008

Background

The Youthful Offender Parole Board for many years was the paroling authority for youths committed by the juvenile court to state juvenile institutions. But over the past three years the board has undergone a statutory change. In the latest change effective January 1, 2007, the youth members of the Board of Parole Hearings became part of the state Division of Juvenile Justice (DJJ) in the Department of Corrections and Rehabilitation.

The duties of the five members of what is now known as the Juvenile Parole Board include establishing the terms and conditions of parole for soon-to-be-paroled youthful offenders, determining whether parolees should be returned to an institution for parole violations, and conducting annual reviews to assess progress of an offender.

- 1. Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure on the board? How will you measure your success?**

The goal on my original appointment to the Juvenile Parole Board (JPB) was to put the experience I had obtained while working in the adult criminal justice system to use, in what I hoped would be a more treatment-oriented system. While working in the position of a JPB Commissioner, I feel I have had that opportunity. I have made decisions based upon my belief that given the right environment, focused treatment, adequate support, and a fair opportunity, every ward could return to the community with a real chance of success. I measure my success on several different levels; 1) I maintain the faith, that given the factors above, wards can succeed; 2) I feel I am contributing in a positive way when sitting on a Board; 3) at no time while making a Board decision have I felt as if I were making that decision against the best interest of the ward; and 4) from day-one I have felt as if I was working in an organization whose goal is improvement, both to the wards, and to the Department.

- 2. What in particular has prepared you to evaluate the readiness of youthful offenders to parole and be independent citizens?**

The obvious answer to this question for me now is the additional experience I have obtained through this position while serving on the Board. I felt at the time of my original appointment that my work within the adult criminal justice system had prepared me, and it had as much as one can be prepared for something they had never done. My prior experience, in conjunction with the opportunity I have been given

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Appointments

to serve in the capacity of a JPB Commissioner, has well prepared me to make these decisions. My attitude has always been, in every Board hearing, in every conversation with staff and in every interaction with each ward, that there is something to be learned, and it is that knowledge that I bring to work with me every day.

Training and Policies

The reorganization of the correctional system, effective July 2005, required new commissioners to undergo a minimum of 40 hours of training within 60 days of appointment, and annually thereafter.

- 3. Please describe your initial training, including content and details of who provided the instruction and the length of the training. In your view, did it adequately prepare you for your job?**

In my original appointment, I mentioned that even though I felt that the initial training I had received had been adequate; I still felt that I would have benefited from more. That was certainly not a negative reflection on the abilities of those providing the training: it was an observation of someone who recognized the complexities of this position. I cannot today give you a first-hand opinion of "initial" training, but I can address the ongoing training we receive as Board members. The most important aspect of training is that the person responsible for arranging the training has a clear and concise understanding of the task. In that respect, the Board could not be better served. Our Executive Officer, Chuck Supple, not only has the experience of having served as a JPB Commissioner, he is also someone who has the ability to always see the big picture. I can say, without question, our training has improved in every regard since his taking that position.

The training provided has included mental health, program, and legal briefings given by policy professionals who are brought in to keep us informed on progress within DJJ. In addition, training has also included interactions with wards in question and answer sessions within the facilities. This training has not only benefited the Board, I feel the time spent with the wards was beneficial in eliminating some misconceptions they may have had concerning Board decisions.

- 4. Much of your work takes place at DJJ facilities. How much time did you spend observing DJJ rehabilitation programs and living conditions during your training? How much time do you now spend observing programs and housing units?**

I have had the opportunity to visit most, if not all, of both the living units, and the treatment locations within the DJJ facilities where I sit on Boards. Due to the conflicts in the scheduling of Boards, and the time of programs, I cannot say I have had the

opportunity to observe as much as I would like, but it is something I try to do as often as time allows. I will add, while conducting hearings, I do have the opportunity to discuss with wards their treatment, living conditions, opinions of how the treatment is provided, and often their suggestions on how their treatment could be improved. At the same time, I can question the staff member presenting the case, getting their opinion of the available programs, as well as answers to concerns I may have about treatment or group living.

5. *Do you receive legal or other guidance or training on the most effective strategies in dealing with juvenile wards, witnesses, and attorneys when conducting a hearing?*

As mentioned earlier, the Executive Officer tries to schedule training that is relative to our job duties, legal issues are a prime example. We have had several training sessions on due process, dealing with witnesses, dealing with, and answering the objections of attorneys, and assuring that a ward is given every accommodation necessary so that he can both understand and communicate during a hearing.

6. *How have you been trained to assess the quality of programming—including the adequacy of classroom instruction—the ward receives? Are there uniform criteria used by all commissioners and hearing officers? If so, please outline them.*

I would say that until lately, most, if not all, of our training was focused on evaluating the progress the ward made through his or her treatment, rather than on the quality of the programming. Recently, we, as hearing officers, have been given several presentations on the development of the next generation of programming within DJJ. It was explained to us that this programming is being developed using “evidence based” principles. The programming will be proven, focused, consistent, and monitored for ward progress. One of the most beneficial components of this treatment to the Board will be the establishment of a “risk factor” evaluation. This will provide a uniform criteria and tool for the Board to both evaluate the ward’s progress and change, as well as tracking programs that may not be adequately preparing the ward for parole.

7. *When you consider parole for a ward, how have you been trained to determine whether he or she is adequately rehabilitated? To which factors do you give the most weight?*

I have had a lot of training and have been given a lot of advice on this subject. Our training has addressed matters as simple as where to look in a file for information on a ward’s behavior, what to look for in case notes, where to find what treatment needs were identified during intake evaluation, and whether the ward was provided that treatment. I have also been trained to look for the more subtle indicators, taking responsibility, minimizing participation, expressing empathy for the victim, internalizing

treatment, providing plans for success, identifying support systems. Last, but by no means least, you have the presentation given by the staff member providing the treatment team's recommendation for parole. Each hearing officer is given the training to look for parole readiness using the above. Each hearing officer has to filter the information through his or her own experience, ask questions for clarification, discuss any concerns with their fellow hearing officers, and then come to a decision. In my decisions, an important factor I consider is whether a ward is able to demonstrate that he or she has really internalized his or her treatment. The ability to not only explain how, in a given situation, he or she will use what was learned in treatment, but the reason why, and the possible consequences of making that decision using their old value system.

8. *When considering parole revocation, what factors have you been trained to take into account? What additional training do you believe would be useful?*

The factors we have been trained to take into consideration are, due process, compliance with ADA requirements, the ward's ability to effectively participate, establishing the ward has adequate counsel, assessing evidence, listening to and evaluating testimony, weight of evidence, and whether that evidence meets preponderance to sustain the allegation. Our training on deposition has us weigh the seriousness of the sustained allegation(s), the ward's criminal history, how the allegation might relate to past criminal behavior, the ward's parole progress, the danger the ward's behavior presented to the community and himself, the available treatment options, the recommendation of parole staff, and, finally, the decision as to which treatment option the ward would most benefit from, with the least danger to the community and ward.

Parole Revocation Hearings

Under a federal court agreement, in a case known as Valdivia v. Schwarzenegger, adult parole violators have the right to counsel and other due process protections in parole revocation hearings. Now, similar rights are being sought for juveniles in the L.H. v. Schwarzenegger case. A proposed settlement has been under review by the administration. As part of the proposed settlement, DJJ has prepared a plan that would provide legal counsel for all parolees subject to parole violation allegations.

9. *Have you been consulted about the proposed settlement regarding juvenile parole revocation? Do you believe that changes need to be made in the revocation process? If so, please spell out what those changes should be.*

We as Board members have been both informed and consulted on the proposed settlement in the LH lawsuit. I, for one, do believe changes were both necessary, and will benefit the process. The establishing of due process, ADA compliance, attorney representation, and consistent guidelines, will not only make the process more fair, it will establish a pattern of professional thoughtful procedure that will impact every aspect of DJJ services.

10. In what ways are you informed about the availability of alternative sanctions when considering parole revocation? Are there additional programs that you think should be available?

The first sanctions considered at a parole revocation hearing where allegations have been sustained, are those recommended by the agent of record. All disposition recommendations should provide both a sanction for revocation and continue on parole. Through training, and experience as a hearing officer, we are made aware of treatment options both in the facilities and in the community. Our job is to discuss those options with both the parole staff member presenting the case and the ward. Through that conversation, we choose an option which is fair and provides the safest most beneficial treatment program for the ward.

As for additional treatment options, first, I think the agency should always be open to innovation. Any program out there that proves itself effective should be seriously evaluated and utilized if it is the best treatment option. Second, we need more treatment providers in the community. We need substance abuse, mental health, sex offender, gang awareness, anger management, domestic violence, impulse control, decision making, vocational, and individual treatment, all within the communities in which our wards live. We should strive to provide programming that not only provides a safe and secure environment for treatment, but is representative of the area in which these youth will be living. It is difficult when a person is introduced to support services in a community that is several hundred miles from where he or she is going to be living, especially when those same support services may not be available in his or her neighborhood.

Parole Consideration Hearings

Hearings are conducted at adult prisons and parole offices, as well as juvenile facilities, throughout the state. Commissioners sometimes may conduct as many as eight or nine different hearings in a single day.

11. Is the quality of the background material you review sufficient to allow you to make informed decisions? How could it be improved?

I believe for the most part the material we are provided is sufficient to allow us to make an informed parole decision. There are times when material, such as a Psychological Evaluation is missing, and we, the hearing officer, feel that information is needed to make our decision. But, in most cases where information in a psychological report is important, one is provided. As for improvements, in my opinion, they are on the way. As soon as possible, the Department needs to put the policies and programming they have been developing in the reorganization into practice. Hearing officers need the benefit of the proposed risk assessment. We need to know the wards have been consistently evaluated, and all treatment needs have been addressed. We need the assurance that all parties concerned with establishing a program for a ward are basing their decisions and recommendations on accurate and consistent information.

12. Please describe how you prepare for a parole consideration hearing. Board members typically review a youthful offender's file on the morning of the hearing. Is this your practice? If so, do you believe it prepares you adequately? How could this process be improved?

My preparation does consist of reviewing information from the ward's file the morning of the hearing. It is my practice to arrive early the day of the hearings, and prepare as many of the cases as possible prior to starting the hearings. I then utilize the breaks between hearings to prepare additional cases. It is fortunate for the Department that we have so many experienced individuals involved in the process. From the planning of the hearings, where complexities of each case are taken into consideration when scheduling the number of hearings, to ward movement, where the efficient flow of wards, witnesses, and facility staff keep things on track. It is the entire process that allows hearing officers to adequately prepare for a hearing. And in those infrequent cases where unplanned circumstances lead to delays, it is the dedication of that experienced staff which allows the necessary adjustments to find the necessary time to prepare. I have never participated in a hearing where I felt a time issue affected the outcome of a hearing.

13. How do you balance the recommendations of a parole agent or a more experienced commissioner hearing the case with your own judgment of a ward's case for parole? How much weight do you place on the advice of DJJ staff?

I take all information into consideration when making a parole decision. I consider facility staff as trained and professional individuals. I look at their recommendations as thoughtful and informed. The same goes for my fellow hearing officers, regardless of their time on the Board, each brings a wealth of personal and professional experience to the table. With that said, I still have to make my decision on my judgment. I take my responsibility as a Commissioner very seriously, and it is my duty to consider all the information provided, but base the decision on my judgment, and what I think is best for the ward and the community.

- 14. *When you recommend that a parolee be sent to a treatment program, such as substance abuse, as part of their parole plan, how are you informed about the availability and quality of these programs? Please describe the kind of follow-up that occurs when you recommend that a parolee go to a particular program.***

In reality, this process has a lot to do with confidence in the system. As a hearing officer, you can Board-order a program. It becomes a condition of parole that the ward participate in whatever program was deemed necessary, if for some reason that is not possible, this change must be brought before a hearing officer for a change of Board order. This is where confidence in the system must exist. Unlike a parole agent, or a facility counselor, hearing officers are not given a case load. I may parole a ward in the north, and his placement will be in the south. Hearing officers sitting on the Board in a northern facility may set conditions of parole, but it will be up to staff in Southern California to establish the quality of the program, the ward's level of participation, and a southern hearing officer will be reviewing that information at case review. I have confidence in the established process statewide. That confidence comes from both my interactions with the people making these decisions, and the knowledge that their decisions are based on the same training and common purpose. I think every hearing officer would love to be kept informed on every ward on which they have made a decision. Unfortunately, it is not practical, or possible, it is our confidence in the system, and those whose job it is to regulate that system, that allows us to go on.

Time Issues

DJJ has a disciplinary system in which additional time can be added before a youth may be considered for parole. Youth can appeal these "time adds" to the board. A national team of experts who reviewed DJJ two years ago recommended that the system of "good time" be enhanced so that youths who participate in programs and stay out of trouble can earn back their disciplinary time and be considered for parole at an earlier date.

- 15. *From your experience, what are the factors causing increases in the lengths of stay for youthful offenders? What action, if any, would you recommend to address this issue?***

In my opinion the major factor causing the increase in the length of stay of our youthful offenders, their increased need for treatment. We are dealing with a much more criminally sophisticated, gang entrenched, institutionalized offender, than in the past. This higher level of criminal sophistication, and gang entrenchment has resulted in increased disciplinary action, more resistance to treatment, and peer pressure to put the interest of the gang over their own. This is by no means all of the wards we provide

services to, but it is a significant number of them, and that segment of the population has a profound impact on the instructional program. I think this is something that has taken effect over a long period of time, and in reality, the Department has been slow to react. The action that is needed to address this problem, is the action that is currently in the process of being implemented: the establishment of safer, smaller, better regulated living units; treatment that is more individualized to specific needs of a ward; more consistency in both treatment, and the monitoring of how a ward is benefiting from that treatment; programs that are "evidence based" where there is evidence that the principles and procedures used in a program have been proven to work; utilizing "motivational interviewing" techniques, a method that makes talking with wards more of a conversation, and less of a confrontation; better mental health treatment, and programming that takes any mental health issues into consideration. My recommendation is to give this the priority it deserves, and continue putting it into effect as quickly as possible

16. What is the board's policy on factoring in "good time" or positive behavior? Has the board discussed the best approach to this issue? How do you make this determination?

The Board does not have a major role in determining time. I, as a Board member, will access time at a revocation hearing, or sustain a Time-add given by a facility at a DDMS appeal hearing, but the Board has very little to do with when the ward will come up for parole. My decision on factoring in "good time", or program credits, is solely based on the ward's parole readiness. Positive behavior is always factored into a Board decision for parole, but its impact on program credits, is up to the members of the Youth Authority Administrative Committee in the institution, not the JPB.

Annual Reviews

Commissioners are responsible for an annual review of every offender's progress.

17. What are the benchmarks you look for in this process? What additional information would be helpful to make the most complete assessment?

Although Senate Bill 459 somewhat limits the Board's participation in the Annual Reviews, we do participate in them. My benchmark is positive progress. Every hearing officer would like to see complete success, all Board orders complete, stable placement, loving support, full time employment, pursuit of education, full cooperation with parole staff, substance abuse a thing of the past, only positive peer association, a song in their heart, on their way to an early honorable discharge. This is not the case with our wards; this is not the case with life in general. I judge a ward by how he or she has progressed. Have they been putting in a genuine effort to complete their Board orders? Have they been able to avoid negative police contact? If their placement is not "stable," have they

utilized their support system to keep the instability from affecting their program? Have they found part time work, are they at least making the effort to find a job? If the ward is not working, are they going to school, are they completing community service hours, are they keeping their parole agent up to speed on what they are doing? Rome was not built in a day; a person does not change overnight.

Of course I have to first and foremost look at whether a ward is being a danger to himself, or to the person or property of another. As for what is positive progress, that is based on each ward individually. A part time job for someone who has never had a job is progress. Avoiding negative police contact for six months, for someone who has not had six months without it since they were 10, is progress. This is not to say we should let someone off easy because they have accomplished what seems to be so little in their life, but we have to recognize and encourage positive change.

Farrell Lawsuit

In 2004 the administration reached a landmark settlement in the Farrell lawsuit on the conditions of confinement in juvenile facilities. DJJ is supposed to implement a broad array of reforms, including creating smaller living units, improving education and mental health services, and bolstering safety. One of the goals of the Farrell case is to provide effective education and treatment programs and, under one of the remedial plans, parole is to be reviewed in the coming year.

Last October the court-appointed Farrell special master said that "progress is halting and well behind the schedule" set forth in remedial plans. More recently, advocates for youthful offenders urged the judge in the case to name a receiver to take over DJJ. And last year the governor signed into law SB 81 (Committee on Budget and Fiscal Review, Chapter 175, Statutes of 2007), designed to reduce the population in the state system from about 2,500 to 1,500 of the most high-risk juvenile offenders. The offenders deemed less risky to public safety are to receive services at the county level.

18. How have you been kept abreast of developments in the Farrell case?

I have been kept abreast through regular updates at Board meetings from DJJ personnel responsible for implementing the remedial plan, as well as monthly stakeholder remedial update calls provided by DJJ.

19. What is your understanding of the timeline for Farrell implementation? Will it be accelerated now that the division will have a smaller caseload as a result of SB 81?

The population reduction as a result of SB 81 does not alleviate DJJ of any requirement to implement *Farrell*. A majority of the requirements in *Farrell* are tied to developing

new or existing programs, policies, etc., resulting in a workload that has no correlation to the number of youth in DJJ. In theory, the reduced population may have a slight impact on reducing time-frames for *Farrell* requirements relating to training staff or youth. I do not believe this will be significant enough to actually accelerate the implementation of *Farrell*.

20. *If the judge names a receiver, how will that impact the board?*

If a receiver were appointed, it should have no direct impact on the Board. *Farrell* is limited to what happens to, and is provided for, a youth housed in a DJJ facility. *Farrell* does not address what happens to a youth on parole, nor does it impact the Board's independent authority to access parole suitability. *Farrell* will affect pre-release planning, and the mental evaluations the Board considers at a hearing, but to the extent these items could be directed by a receiver, they would only impact how DJJ interacts with the Board, the receiver would have no involvement with the Board.

**Mark B Horton, MD, MSPH
Director, Department of Public Health
Confirmation Questions**

4/10/2010

**1. What do you hope to accomplish during your tenure as director of DPH?
How will you measure your success?**

During my tenure as director of the California Department of Public Health (CDPH) I hope to:

1. Develop the Department into a much more strategically focused organization and demonstrate progress in reaching specific goals set for priority program areas,
2. Improve the efficiency and effectiveness of the Department, and
3. Strengthen key strategic partnerships.

With respect to number one, we have already embarked on a major strategic planning process that will benchmark the Department's future progress against the National Healthy People 2010 (HP 2010) objectives. To date we have identified priority program areas, chosen specific objectives consistent with HP 2010, and defined strategies for each area. Each area will have clearly articulated performance measures and metrics for measuring the progress toward the objectives over the next two years. The priority program areas span the responsibility of the five Centers in the Department and include obesity and physical activity, tobacco control, infant mortality, communicable diseases like TB and HIV, public health preparedness, environmental issues like lead poisoning and safe drinking water systems, and the quality of care in nursing homes.

In the second area, improving our efficiency and effectiveness, our focus will be on strengthening departmental infrastructure (human resources, particularly scientific, technical, and professional staff, data management and information technology, and our nationally recognized laboratory services), becoming a more performance-based organization, and improving our business practices. Specific activities and accomplishments will include establishing an office of leadership and workforce development, improving the quality and accessibility of public health data, inaugurating a new personnel performance management system, and demonstrating improvement on a "dashboard" of specific business practices within the Department, again using specific performance measures and metrics.

In the third area, strengthening our strategic partnerships, I recognize that CDPH success rests firmly on our continued collaboration and communication with our key external partners including local health departments, key state and federal agencies, businesses, schools, and other non-governmental community-based organizations, health care providers, and academia. I will focus my efforts on maximizing our communication with local public health departments and wherever possible, working to implement policies that utilize the wealth of knowledge and experience of the local departments.

2. With the creation of the new department, what changes have you implemented to improve the operations of public health programs? How are you measuring the performance of the new department?

The creation of CDPH provided me an opportunity to reconfigure and streamline the organizational placement and reporting relationships of public health functions for more effective and efficient delivery of service and program operations. I regrouped the former Prevention Services programs into smaller programmatic Centers, flattening out the organization and allowing the new Center deputy directors, as members of the executive staff, to bring broader and more specialized program input into departmental decision making and direction setting. The new Centers will:

- Ensure quality leadership and management oversight of core public health domains, and
- Ensure high-level visibility of these important public health programmatic domains to key partners and stakeholders such as local health departments, health care providers, the federal government, the Legislature, advocates, the press, and the public.

In addition, I formally established the Coordinating Office for Obesity Prevention to provide policy and program coordination on obesity prevention, physical activity, and nutrition issues across multiple programs. Finally, to accomplish the third goal mentioned above in Question 1, I established an Associate Director for External Affairs to coordinate and integrate the work of our existing offices that work primarily with our external partners and stakeholders.

Since before the new Department was created, I have been working to make CDPH a performance-based organization, one that uses data to focus the organization on continuous improvement. Becoming a performance-based organization will enable CDPH to allocate resources more effectively; identify, quantify, and communicate successes; and manage more effectively. An example of using data to monitor the performance of the Department is the use of data from the Behavior Risk Factor Surveillance Survey to monitor progress on accomplishing HP 2010 objectives here in California.

In mid-2007, we surveyed our external partners and staff that would become part of the new Department to identify the strategic issues we should tackle and to develop some baseline data for measuring the performance of the new Department.

Since August, we have been working to develop CDPH's first strategic plan. The strategic plan identifies goals and objectives with performance measures, including specific targets and deadlines. The CDPH executive team has driven the strategic planning process, but the process has also allowed for input from staff at all levels.

To ensure that we implement the strategic plan, I have dedicated staff resources to collecting the data necessary to assess our progress toward meeting our performance measures.

At the next level, each program within the Department is developing its own strategic action plan, with measurable performance objectives, that integrate with the overall departmental plan.

Finally, one of the objectives of the departmental strategic plan is to implement the performance-based strategy at the individual level, by working to ensure that all employees have an individual development plan, including individual performance objectives, and receive a written annual performance review.

3. What is your current assessment of the readiness of the state to respond to public health emergencies? What are the most significant gaps, and what are your plans to address those gaps?

Governor Schwarzenegger has articulated emergency preparedness and response as one of his highest priorities. His commitment carries into the issues of response to public health emergencies. In 2006, his budget proposed the most significant investment any state has made to improve public health preparedness. The Legislature funded a portion of that request and enabled significant improvements to our preparedness. California is better prepared today than in the past and continues to work to improve its preparedness. CDPH has made significant strides in being prepared for public health emergencies. Among the advances that California has achieved in the last few years are:

- Establishing caches of medical and pharmaceutical supplies to respond during a public health emergency or healthcare surge,
- Being the first in the nation to issue standards and guidelines for healthcare surge during emergencies,
- Maintaining a statewide network of laboratories to conduct public health testing,
- Developing plans for CDPH response to all-hazards, pandemic influenza, and other events,
- Developing a state plan for receipt and distribution of Strategic National Stockpile (SNS). CDC rated the California SNS Plan at 97 percent complete (the highest score in the nation),
- Developing of a Joint Emergency Operations Center (JEOC) with extensive communications equipment shared by CDPH, the Department of Healthcare Services (DHCS) and the Emergency Medical Services Authority (EMSA),
- Maintaining a 24-7 Duty Office program that handles over 700 incidents annually,
- Developing a web-based, secure California Health Alert Network (CAHAN) alerting system with over 12,000 users, and
- Developing an award-winning toolkit in risk communication for use by local health departments (LHD).

The most significant gaps and challenges that California faces are the following:

Although the fiscal year (FY) 2006-07 budget provided extensive resources for a healthcare surge, California does not yet have adequate resources for a catastrophic event such as an influenza pandemic. According to a survey conducted in 2006, California still has a significant gap in the number of acute care beds and ventilators needed during a pandemic. Based on a quantitative analysis, using the Centers for Disease Control and Prevention (CDC) Flu Surge 2.0 software, CDPH calculated surge needs for a catastrophic event such as the pandemic influenza. Based on the analysis, California will need nearly 59,000 surge beds (approximately 40,000 more surge beds than we have available). Although the Legislature provided funds to mitigate part of this gap, in many areas a 50 percent gap remains. Although we are not anticipating funding for the remaining supplies and equipment during this difficult budget year, the gap still remains.

The State must develop an integrated pandemic response plan across all departments and agencies that integrates the private sector. An influenza pandemic would challenge California beyond the experience of disasters in recent years because we anticipate that the event would be statewide, that mutual aid would not be available to communities from within the State, and that a pandemic could last up to two years. There has been significant planning conducted to help prepare for such an event, however, continued focus in this area is needed to ensure that the plans are improved. In addition, the Governor's Office of Emergency Services (OES) and CDPH are working to develop a comprehensive, statewide plan to address this critical issue.

Many threats such as a pandemic or any other infectious disease will require increased laboratory testing capacity. The public health laboratories at the state and local level face staffing challenges in hiring and retaining microbiologists. This is caused by a shrinking labor pool across the nation and government salaries that are below the private sector. CDPH is working with the Department of Personnel Administration to examine the salary ranges for these classifications to determine if augmentation is necessary.

Maintaining our readiness through ongoing training and exercises continues to be a challenge, particularly in the face of diminishing federal resources. Exercising public health and medical response to large-scale emergencies is critical to ensuring that both government and the private sector can respond as quickly as possible. The majority of the resources needed to respond to a public health or medical emergency are held by private sector entities. Their participation in exercises is critical and has a fiscal impact on them. In the past, we have been able to provide some financial assistance to help support cross-functional exercises through use of federal grant dollars. CDPH has participated in all Golden Guardian exercises and will exercise the healthcare surge capacity in Golden Guardian 2008. CDPH is developing an exercise that focuses on pandemic influenza to be held in 2009.

Local health departments need to continue developing their SNS programs. This includes involving other county agencies such as law enforcement to provide security at local SNS warehouses and dispensing sites. CDPH has focused on providing technical assistance to local health departments, including on-site visits and a statewide SNS conference to be held in June 2008.

4. The department maintains several disaster-related emergency plans. How are you monitoring and updating these plans? How are you working with federal, state and local agencies to ensure that the roles and responsibilities of each agency are clear?

CDPH's primary response plan covers all hazards. Additionally, CDPH has response plans for specific conditions (e.g., smallpox, pandemic influenza), specific activities (e.g., activation of the Strategic National Stockpile, maintaining continuity of government), and for specific program areas (e.g., Radiologic Health, Licensing and Certification.) Many of these, including the all-hazard response plan, were developed by the former California Department of Health Services (DHS) and CDPH is updating them. CDPH is reviewing all emergency response plans for compliance with the Standardized Emergency Management System (SEMS) and the National Incident Management System (NIMS). CDPH regularly tests the emergency plans through exercises such as the annual Golden Guardian exercise and the Rough and Ready exercise. In addition, CDPH reviews and updates emergency plans in response to lessons learned through any activation of the plan, such as the extreme heat or California wildfires.

The OES is statutorily charged with maintaining the State Emergency Plan. CDPH works with OES to ensure that all CDPH emergency response plans are consistent with the State Emergency Plan. OES designates specific functions to individual state agencies; CDPH is designated through an Administrative Order with OES as the lead state agency for public health. CDPH's all-hazards response plan and continuity of government plan were reviewed and approved by OES. CDPH also regularly works with federal and local agencies to define roles and responsibilities in procedures that range from SNS activities to laboratory testing. At the local level, CDPH regularly offers regional training to local health departments on response planning for scenarios such as a pandemic influenza and activation of the SNS and monitors testing of these plans through local exercises.

5. Which recommendations from the local health departments' report, if any, are you considering for implementation?

In 2005, DHS contracted with the Health Officers Association of California (HOAC) to assess each local health department's (LHD) ability to respond to public health emergencies. This project was conducted under joint governance of the County Health Executives Association of California (CHEAC), the California Conference of Local Health Officers (CCLHO), and DHS.

In conjunction with LHD leadership, in 2008, CDPH formed a steering committee to review the recommendations in the final report. The steering committee includes representatives from CCLHO, CHEAC, CDPH, the California Conference of Local Nursing Directors, the California Conference of Local Public Health Laboratory Directors, and one Public Health Emergency Preparedness Coordinator from each of California's six mutual aid regions.

The steering committee identified the following high priority recommendations:

- Implementing automated reporting and analysis of morbidity data,
- Ensuring LHDs have plans for recovery immediately following a public health emergency,
- Strengthening CDPH and LHD laboratories, and
- Continuing to improve California Health Alert Network (CAHAN) capability, add healthcare providers, and ensure that all LHDs use it.

The steering committee has met three times and reviewed all recommendations with particular emphasis on strategic direction for future actions. The steering committee has considered the following in reviewing recommendations: that assessments were conducted in 2005 – 2006 and LHDs have completed a great deal since then and that funding to LHDs will decline significantly in 2008. The highest priorities include sustaining development during a time of scarce resources, maximizing efficiency through sharing best practices and model templates, and maintaining communications systems and information technology infrastructure.

6. How does the department work with other state agencies in identifying potential risks to public health and taking steps to prevent harmful episodes? Please include specific examples.

Interagency and multidisciplinary efforts are essential in order to carry out the core public health activities of tracking (i.e., surveillance), investigating, educating, providing technical assistance, planning, implementing plans, evaluating programs and impacts, and making policy. There is a natural partnership among those agencies charged with protecting and preserving the public's health. This is perhaps best exemplified in the areas of occupational health, environmental health, and drinking water standards.

Worker Safety: CDPH's Occupational Health Branch (OHB) conducts worker health research and workplace investigations, provides technical assistance/advice to employers, and provides consultation to the California Occupational Safety and Health Administration (CalOSHA) in the Labor and Workforce Development Agency when conducting workplace inspections and enforcing occupational health standards. CalOSHA relies upon CDPH/OHB physicians to assist with some worksite inspections and to provide recommendations for appropriate actions. They also rely upon CDPH/OHB to perform surveillance of workplace conditions (e.g., violence, asthma, injuries) and to perform studies of emerging occupational threats like diacetyl (butter flavoring) in manufacturing workers. Finally, CalOSHA relies on CDPH/OHB Hazard

Evaluation Services and Information System (HESIS) to provide information to workers and managers about substances found in the workplace.

Drinking Water: The CDPH Drinking Water Program is responsible for regulating water quality in public water systems, including regulating chemical contaminants. As part of the process of developing a drinking water standard for chemical contaminants, the state Office of Environmental Health Hazard Assessment (OEHHA) develops a draft public health goal (PHG), a contaminant level at which no adverse health consequences are expected to occur over a lifetime. The PHG is subject to public hearings and peer review by the scientific community prior to its release to CDPH and the public. Once OEHHA releases the PHG, CDPH develops a drinking water standard that is as close as technologically and economically feasible to the PHG.

CDPH and OEHHA each have an integral role in establishing drinking water standards that assure consumers of the safety of their drinking water. These PHGs and subsequent drinking water standards are developed independently to assure sound science-based review and approval by two separate government entities.

Some additional examples of our collaborations with other agencies to identify risks and to take steps to prevent those risks include:

Environmental health tracking: CDPH convenes several state programs and offices that collect data on environmental hazards, environmental exposures, and environmentally related diseases. These state entities include all boards, departments, and offices of the California Environmental Protection Agency (CalEPA), as well as some of the programs of the Resources Agency. The group shares and reviews data to identify trends or suggested associations between exposures and diseases and to examine the public health impacts of environmental policies. Through this multi-departmental working group, CDPH has documented the effects of traffic-related emissions on asthma severity and hospitalizations and identified disparities in asthma hospitalizations, emergency room visits, and medication use by income.

Site assessments: CDPH works with environmental agencies like CalEPA and the Resources Agency at contaminated sites. While the other agencies characterize the contamination on site and identify methods to clean them up, CDPH staff plays a complementary role in this process by evaluating whether contaminants have reached response workers or people who live nearby and the nature and extent of that exposure.

Biomonitoring: Through the passage of SB 1379 (Chapter 599, Statutes of 2006), CDPH has been charged with coordinating the California Environmental Contaminant Biomonitoring Program. This is done in conjunction with CalEPA and the University of California. The program is the first state program to use sophisticated laboratory methods to measure the presence of environmental contaminants in human tissues and learn more about the health impacts of environmental exposures.

Lead poisoning: CDPH's Childhood Lead Poisoning Prevention Program and Occupational Lead Poisoning Prevention Program work with local, state, and federal partners including housing authorities, health care providers, consumer product regulators and legal groups to reduce lead exposures and to identify cases of lead poisoning in order to treat the exposed patients and prevent future cases.

Green Chemistry: The Governor and state programs are assessing how to make products safer by influencing choices of raw material inputs, product design, product formulation processes, waste streams, and product reuse or recycling. Over 80,000 chemicals are used in commerce. Most of them are insufficiently characterized with regard to toxicity. CDPH is engaged with Cal EPA, the University of California, the private sector, and other public sector partners in this effort.

7. When managing the risk to public health, how does the department weigh economic factors?

CDPH seeks to provide credible, scientific information to both policymakers and the public. Risk assessment is a scientific exercise that seeks to determine whether a given exposure or toxin is potentially dangerous and then quantify the level of the danger. Risk management seeks to determine what actions are practicable to reduce the risk. The assessment of risk should be performed on a scientific basis. Once that assessment is completed, it should be incorporated into the complex decisions for risk management. Risk management occurs at the individual, institutional, and government levels. At each level, economic factors can play a role.

At the individual level, CDPH provides information to people about risks so that they may act on their own behalf. It is extremely challenging to make sure that all people have equal access to such information. CDPH seeks to find ways to help people avoid risks even if their social, cultural, educational, and financial means are limited. Efforts include programs to reduce lead exposure, to support good indoor air quality in all homes, and to promote education of the toxicity of common consumer products.

At the institutional level (voluntary or regulatory), CDPH works to reduce risks while balancing economic pressures. CDPH works with groups and businesses to continually assess risks and benefits of breast feeding, of eating commercial or sport-caught fish, of instituting personal exposure controls in the workplace, or of implementing contaminant reduction measures in drinking water systems.

At the government level, which is often regulatory, economics is one of many variables that go into the decision process. Each agency with which CDPH works routinely considers economics as it sets standards as either specified in statute, or if statute is silent, by using its discretion to closely examine environmental and safety factors and the costs related to the public, special populations, the medical community, , business, and other government entities.

For example, CDPH reports on the anticipated economic and fiscal impact of proposed regulations on the private sector by information provided in the Economic Impact Statement, and the financial impact of proposed regulations on the public or government sector in the Fiscal Impact Statement. These statements advise the public that affected businesses may or may not incur a cost caused by implementing the regulation, an estimate of that cost, a summary of the benefits business is likely to realize as a result of the regulations, and a brief description of any alternatives considered; or inform local and state government of the fiscal impact to state or federal funding.

California constantly must weigh economic factors against established or perceived risks. CDPH tries to provide policy makers with the best information possible to aid in policy decisions.

8. Based on more recent experiences with food safety issues, does the department have plans to update its guidelines regarding investigations of food and other product safety complaints? What lessons were learned during the spinach related E-Coli outbreak in regard to DPH's role?

CDPH has already updated its food and drug investigation guidelines to reflect the new information obtained during the recent investigations of several leafy green-associated outbreaks. As additional foodborne and drug illness investigations are conducted and as scientific advances are achieved, CDPH will continue to update those guidelines to reflect best practices for protecting public health. As an example, recent CDPH investigations have confirmed that appropriate controls for water, wildlife, workers, and manure-based fertilizers must be implemented to reduce the risk of illness.

Based upon these investigation experiences, CDPH has intensified and improved its collaboration with the U.S. Food and Drug Administration (FDA) to implement a successful approach to investigating foodborne outbreaks that utilizes laboratory, scientific, and investigative expertise from both agencies and eliminates duplication of effort. This new model is called the California Food Emergency Response Team (CalFERT) and includes highly trained and experienced staff from CDPH and FDA. CDPH is finalizing a new procedures manual with FDA to reflect these lessons learned and will continue to update it with new approaches and findings. Because of this new model, CDPH and FDA were successful in tracing the product from numerous suppliers to the farm level and finding identical (molecular matching) pathogens on or near farms that provided leafy greens during the time period of interest. CalFERT is so successful that FDA is investing significant resources to duplicate the model in other areas of the country.

CDPH provided technical assistance to industry and the California Department of Food and Agriculture in the formulation of the new Leafy Greens Marketing Agreement Good Agricultural Practices. When adhered to, those farming practices will significantly reduce the risk of introducing contaminants on or into the food. Implementation data from the Leafy Green Marketing Agreement Good Agricultural Practices are being

accumulated and analyzed by industry. The analysis of these data will provide objective, science-based information to improve the existing Good Agricultural Practices.

9. What is your reporting protocol for meat and poultry distributors, and how have you informed them about the new SB 611 requirements and the process for reporting? What is your process for making this information available to the local health agencies and the public?

Meat and poultry processors and distributors engaged in a class I or II recall are required to notify CDPH immediately. This notification can be made via e-mail to the Food and Drug Branch (FDB) at fdbinfo@cdph.ca.gov or by phone to FDB at (916) 650-6500. Upon receipt of this notification, CDPH will provide the firm with an electronic spreadsheet to be completed by the firm with their distribution list of firms that received the recalled product. FDB will also provide an e-mail or fax number where the completed spreadsheet can be returned.

FDB provides retail distribution information for recalled products (in spreadsheet format) to local health officers and environmental health directors via pre-defined email distribution lists. This information is provided on a flow basis, as it is received and organized. FDB also posts these same retail distribution lists on its website for access by the public, media, and industry.

The new requirements for meat and poultry processors, distributors, and brokers to provide CDPH with a listing of customers who received recalled meat and poultry products were thoroughly evaluated during the recent Westland/Hallmark recall of 143 million pounds of beef. CDPH identified 14,000 retail firms that received the recalled product in California. Local agencies conducted numerous recall effectiveness checks at these retail locations. As part of the process to improve recall procedures, CDPH is considering a plan to contract with a commercial call center to assist with large recalls, if needed. This would free CDPH staff to focus on higher priority activities associated with a large recall such as working with local agencies to ensure that the recalled products have been removed from sale and taking appropriate enforcement actions when a firm does not comply with repeated requests for distribution information.

10. What do you believe are the most effective strategies for the state in promoting healthy lifestyles, given current budget constraints?

In times of limited financial resources, the best prevention strategies involve education and increased awareness about healthy lifestyles and changing individual behavior. Promoting healthy lifestyles requires a multifaceted response to drive far-reaching change in all sectors of society, including individuals, families, communities, schools, business, and government. As recognized by California's tobacco and other public health successes, confronting public health challenges such as obesity will require a common purpose and significant commitment of resources, as well as demand strategies that emphasize primary prevention. California leads the nation in redefining

societal norms as a means to change individual behavior. The most successful example of this is the progress we have seen in tobacco use reduction over the past 19 years.

CDPH has been extending a similar approach in addressing the obesity epidemic. We have been working closely with the Governor's Office, the Health and Human Services Agency, and the California Department of Education to develop and implement standards established by SB 12 (Chapter 325, Statute of 2005) and SB 965 (Chapter 237, Statutes of 2005), as well as administrative policies to improve nutrition, physical activity, and physical education in California's schools, child-care settings, and after school programs. CDPH provides technical assistance to the California Department of Education and to school and childcare organizations to implement these policies.

CDPH has been working to create partnerships with California employers and their health care insurers to address obesity and spiraling health care costs. Through a public-private partnership of shared responsibility, CDPH is providing information to businesses to implement policy and environmental changes in workplaces to encourage employees to lead healthy active lives, increase access to health promotion activities, and take personal responsibility for their health.

Employers are encouraged to provide increased access to healthcare that concentrates on prevention, with an emphasis on obesity reduction and prevention. Health insurers are encouraged to provide health care options that focus on prevention rather than treatment.

CDPH realizes the importance of streamlining and coordinating programs. Through the Coordinating Office of Obesity Prevention (CO-OP), efforts have been focused on providing comprehensive, coordinated, and integrated programs; reducing duplication of services; and increasing collaboration across programs.

11. How are you measuring the effectiveness of your department's activities to promote healthy lifestyles?

CDPH uses many tools to measure the effectiveness of program initiatives and progress toward program goals. These measurement tools include department surveys, tracing and monitoring required by federal and private grants, and data collection and evaluation. These evaluative tools measure program effectiveness and allow CDPH to direct program resources toward those tools that provide the most impact. Investments in public health yield greater long-term cost savings than short-term investment. Some examples of department measurement tools are:

Tobacco Control Program (CTCP)

- Monitoring of tobacco-related morbidity and mortality, especially lung cancer incidence, provides feedback on the programs ultimate goal of reducing death and disease.

- Ongoing annual adult tobacco-specific survey to monitor tobacco use, knowledge, and attitudes conducted via the telephone.
- Triennial adult telephone survey focusing on current and past smoking behavior along with providing specific census data.
- A statewide in-school tobacco use survey of middle school and high school students to determine the effectiveness of the California Department of Education's Tobacco Use Prevention Education programs.
- An annual survey of tobacco retailers throughout the state where minors attempt to purchase cigarettes. These data are used to meet the federal requirements of the Substance Abuse Prevention and Treatment (SAPT) Block Grant Program that illegal sales of tobacco to minors' be 20 percent or less.
- Triennial written survey of law enforcement officials related to the enforcement of youth access to tobacco product and secondhand smoke laws in California.
- Requiring all contractors to have an evaluation plan and a qualified evaluator report describing the intervention and outcomes at the end of the contract term.
- California Media Evaluation Survey: A web-based panel of adult Californians used to measure the effectiveness of CTCF's media campaign.

Obesity Prevention Programs

- As required by U.S. Department of Agriculture (USDA), the Cancer Prevention and Nutrition Section provides regular tracking reports on Food Stamp Nutrition Education activities conducted via the *Network for a Healthy California (Network)*. The *Network's* specific evaluation and tracking activities include:
 - Three biennial surveys that focus on dietary and physical activity behavior, attitudes, beliefs, and opinions: The California Children's Healthy Eating and Exercise Survey of 9-11 year olds, the California Teen Eating, Exercise, and Nutrition Survey 12-17 year olds, and the California Dietary Practices Survey of adults age 18+.
 - The annual Benchmark Survey to evaluate the Network's targeted media campaign. The survey measures low-income, Food Stamp, and low-income child population to assess aided and unaided exposure to advertising, as well as behavior, attitudes, beliefs, and opinions.
 - The Semi-Annual Activity Report (SAAR) to track quantified process data from almost 100 local assistance contractors.
 - Impact Evaluation to measure individual behavior change: In 2006, 46 *Network* contractors evaluated the impact of diverse nutrition education interventions like Harvest of the Month and/or Power Play!. Various surveys were used to measure change in fruit and vegetable consumption and factors that influence it, like knowledge, preferences, and self-efficacy. Results showed that there was a statistically significant increase in fruit and vegetable consumption for 14 of the 29 that measured it and 41 of the contractors showed significant change in at least one factor. Qualitative data also indicated consumption had increased for children and parents. Evaluation results were primarily used to improve programs. The Impact Evaluation Final Report FFY 2006 can be found at: <http://www.dhs.ca.gov/ps/cdic/cpns/default.htm>.

- USDA is developing an additional reporting system for FSNE called Education and Administrative Reporting System (EARS) for implementation in Federal Fiscal Year 2008. The report will identify if participants by gender, race, and Food Stamp program participation.

In addition, CDPH uses information from surveys conducted by other entities including the Behavioral Risk Factor Survey (BRFS), the California Women's Health Survey (CWHS), and the California Health Interview Survey (CHIS). These surveys allow CDPH to follow changes over time in the California population, as well as within subgroups.

12. Which recommendations for state action in the obesity prevention plan have yet to be implemented and what are your plans to implement them?

The California Department of Public Health's (CDPH) foundation to guide a statewide response to the obesity crisis is the *California Obesity Prevention Plan (COPP): A Vision for Tomorrow, Strategic Actions for Today*, released by Governor Schwarzenegger in 2006. Based on the Governor's *10-Step Vision for a Healthy California*, the plan identifies the following four key area components necessary for implementing a comprehensive obesity prevention program:

- 1) State Level Leadership, Support and Coordination;
- 2) Public Education and Media Campaigns;
- 3) Local Assistance; and
- 4) Data Collection, Statewide Tracking and Evaluation.

CDPH has implemented the following components of COPP:

- Created and convened the Obesity Prevention Group made up of representatives with expertise in: policy, data, evaluation, surveillance, health disparities, nutrition, physical activity, built environment and community design, transportation and land use planning;
- Focused departmental efforts by creating the Coordinating Office for Obesity Prevention (CO-OP) to serve as the single point of contact for external partners and constituents interested in engaging with the Department on obesity and chronic disease efforts; and
- Empowered CO-OP, under the direct leadership of the Chief Deputy Director of Policy and Programs, with the authority to guide and support department-wide planning and policy and resource development. CO-OP will continue to track obesity prevention activities and efforts to highlight best practices and promote efficiencies.

Other components of COPP were included within Governor Schwarzenegger's comprehensive health care reform proposal, including a sustained media campaign to encourage healthy choices, community-based activities to increase access to healthy food in stores and physical activity in schools and neighborhoods, employee wellness programs and school-based strategies that engage the broader community in obesity

prevention, and a comprehensive statewide tracking and evaluation system. The importance of this policy was demonstrated by the inclusion of an obesity initiative in the Governor's health care reform proposal, as well as the proposals by members of Legislature. We continue to believe that any comprehensive health care reform proposal must contain a wellness and prevention component to improve health and lower healthcare costs.

Until resources are appropriated for an obesity-focused initiative, CDPH will continue to identify opportunities to move forward with obesity prevention strategies, including the following activities that are currently underway:

- With direction from and in support of CHHSA, refining and re-focusing the Get Healthy California! Workgroup to serve as a high-level action-specific collaborative to coordinate the efforts of other state and local agencies and departments, as well as private partners, to implement priority actions of the COPP in an integrated and consistent manner.
- Working in collaboration with the Department of Health Care Services, the First 5 California Commission, the California Department of Education, the California Department of Food and Agriculture and other workgroup members to coordinate statewide media and public education campaigns that promote obesity prevention, healthy eating, and active living and create a comprehensive approach to track the health impacts of obesity and evaluate obesity prevention programs.
- Reporting annual progress in implementing the recommendations using the COPP Score Card. The Score Card provides a baseline inventory of where California is in implementing each of the COPP recommended actions and what still needs to be resourced and done. CDPH will use this tool to inform next steps in implementation and demonstrate progress over time.

CDPH, in partnership with the Public Health Institute, has secured seed funding from The California Endowment that will enable CDPH to convene internal and external stakeholders to move forward with implementation of the California Obesity Prevention Plan. CDPH has also submitted a proposal to CDC to begin implementing the state's obesity plan, monitor the prevalence of obesity, and evaluate the plan's effect. The average award from CDC is expected to be \$650,000 per year for five years.

Finally, over the next 18 months, CDPH will implement significant changes in the foods provided by the Women, Infants and Children (WIC) Supplemental Nutrition Program to 1.4 million Californians each month. The changes—including providing fruits and vegetables, whole grains and low fat dairy products—will promote healthier food choices for families.

Which entity is the central point of contact within state government to coordinate these issues?

CDPH has established the Coordinating Office for Obesity Prevention (CO-OP) to coordinate and track the multiple and diverse efforts of the various state agencies, departments, industry, and the public sector. CO-OP builds on the strengths of existing

department programs and helps plan and coordinate policy development and leverage new program resources within the public and private sectors.

A number of state departments, in addition to CDPH, play key roles in California's efforts to combat obesity, including the Department of Health Care Services, the California Department of Education, the California Department of Food and Agriculture, the California Department of Parks and Recreation, and the Department of Transportation (CalTrans).

13. What changes have you implemented in the licensing division to monitor the performance of the program? How do you measure the quality of the licensing division?

CDPH's Licensing and Certification (L&C) Division has instituted a number of changes to improve the consistency of its surveys and performance. L&C has initiated several indicators to monitor performance:

- L&C developed statewide performance measures that are applied to monitor district office performance to ensure timeliness of completing survey documents, and adherence to state and federal workload performance standards. L&C uses existing reports and is in the development stage of new ad hoc reports to monitor the measures.
- L&C's Training and Quality Assurance Section conducts quarterly monitoring of district office complaint investigations and adherence to the new policy and procedure.

L&C continues to undertake training to improve performance including:

- L&C distributes District Office Memorandums (DOM) as necessary to prescribe how a District Office will perform a stated practice. For example, two new DOMs are forthcoming regarding SB 1301 Adverse Events reporting and SB 1312 Administrative Penalties.
- L&C completely revised its Complaint Policy and Procedure and has conducted training in every district office on the new policy.
- L&C developed two new training academies geared for district office supervisors and district office support staff. Both academies will reinforce current office procedures and provide updates on changes in exiting procedures and data consistency
- L&C developed a new survey tool to train district office staff on how to conduct state licensing surveys for long-term care facilities. Every district office has been trained in the new tool and process.
- L&C Training and Quality Assurance Unit presented a refresher course to every district office on principles of documentation to be used when conducting surveys.

14. How do you prioritize the activities of the licensing division in light of budget restraints?

L&C Program activities are largely driven by the state and federal workload and are largely fee supported.

On an annual basis, the Centers for Medicare and Medicaid Services (CMS) issues a Mission Letter that identifies all of the federal certification workload requirements for the upcoming federal fiscal year and provides the level of funding earmarked for each state. Workload is broken out into four priority tiers and survey activities must be scheduled and conducted in accordance with the priority ranking. Full completion of Tier 1 workload is specifically mandated in order to receive full grant funding. Planning for lower-tiered items presumes that the State will accomplish higher-tiered workloads. L&C first prioritizes its workload to meet CMS recertification timeframes. This workload is a known quantity based upon past survey dates. At the beginning of each month, a district office will review its upcoming workload and schedule recertification surveys that are coming due that month or next month. If the district office has previously received a high priority requests from CMS, such as validation survey at a hospital, it will be scheduled at this time. Requests to conduct state licensing surveys, such as initial surveys for new providers or periodic licensing surveys of facilities will be scheduled at this monthly meeting as well.

State licensing workload is mandated through the Health and Safety Code. The governing statutes contain requirements for the frequency of surveys and the timely response to complaints and investigations. Annual workload is projected based on the required frequency of inspections and number of facilities. State workload is funded through the payment of license fees from over 30 different health facility types.

In response to the 2007 court case, *CANHR v Shewry*, complaint investigations are a high priority workload for L&C. The court ruled that L&C must abide by the statutory timeframes and set target dates for eliminating the backlog of uninitiated complaints and maintaining timely initiation of new complaints. L&C is in full compliance with the court order. Based on projections based on prior year data, L&C expects over 23,500 complaints and roughly 30,000 events to be reported in 2008. Received complaints and reported events that are prioritized as immediate jeopardy are assigned to any staff in the office available to initiate the complaint within statutory timeframes. All other complaints and reported events are assigned to staff to be initiated within ten days and the responsibility lies with the surveyor and supervisor to ensure that these complaints are conducted timely.

If a significant, unexpected event occurs mid-month, such as a need to conduct a full scale survey at a hospital, the district office may need to revise its survey schedule to meet this new workload. In such cases, a district office will have to "bump" a lower priority work assignment, such as an initial licensing survey, to free up staff resources to meet the new demand.

L&C has a designated Quality Assurance Team made up of Health Facility Evaluator Nurses whose responsibility is to check the quality of the surveyor's write-ups/documentation and determination made about deficiencies, violations, and immediate jeopardy (IJ) being called by Field Operations staff. All IJ documents are sent to the Quality Assurance Team to review for appropriateness of determination and to review the quality of the written documentation. Additionally, the Quality Assurance Team goes into each district office on a quarterly basis and reviews a sample of complaints conducted by the surveyors in the specific office. Written feedback is provided directly to the district office for their review and concurrence. If a specific area appears deficient consistently in a specific office, the Quality Assurance Team will recommend a training module to the district office and training section. Specific modules such as Principles of Documentation and Principle of Investigation may be provided to the district office. The quality assurance review results are reviewed and discussed at the field operations district office managers meetings.

15. What is your timeline for addressing the remaining BSA report recommendations?

One Bureau of State Audit (BSA) recommendation is the timely completion of complaint investigations. Data from the L&C automated complaint tracking system show completion of both complaint and reported events has improved by 20% from fiscal year 2005-06 to fiscal year 2006-07. In addition, L&C has developed district office performance measures. One of the measures includes complaint closure. L&C is developing monthly management reports to track progress on this issue.

A second BSA recommendation is that L&C should ensure the accuracy of information included in its new Health Facility Consumer Information System (HFCIS). The information pulled for this public website comes directly from the L&C database used to report findings to CMS. In addition to making sure the information that is reported to CMS is accurate, L&C has reviewed the HFCIS database to ensure that ownership information and enforcement actions are properly reported on this website.

A third BSA recommendation was to ensure that recertification surveys are not predictable. Survey schedules have been completely revamped in order to meet the complaint initiation timeframes required under state law and compelled under the CANHR lawsuit.

A fourth BSA recommendation concerns the solicitation for an available pool of new temporary managers. The process and documents needed to implement recommendation are under final review by senior managers. L&C has received the names of individuals who wish to apply to be temporary managers. Once the solicitation is finalized, these individuals, providers, and advocacy groups will receive the solicitation forms by late spring.

Lastly, the BSA report stated that L&C does not have an approved contract with an outside entity to conduct a classification study needed to assist the Department in recruiting and retaining personnel. This contract with Cooperative Personnel Services (CPS) has been signed. CPS is conducting this study and has already surveyed the necessary individuals to be included in this study. CDPH is on track to meet the obligation to submit findings and recommendations to the Department of Personnel Administration by June 2008.

16. What are your plans to address DOF's final report recommendations?

The Office of State Audits and Evaluation (OSAE) conducted an audit of L&C's fee methodology and staff utilization. The final report, issued on January 31, 2008, indicated that six corrective actions were necessary because of unsupported or inaccurate data and poor timesheet design.

L&C formed a taskforce that met consistently in 2006 throughout the design and implementation phases of the timekeeping system, and again when it was discovered that there were problems with reconciliation of the data in the timekeeping system. Since that time, the taskforce has worked to devise a reconciliation process to correct data errors and to implement an on-going reconciliation process on a monthly basis. The efforts of the taskforce continue and all activities required to fully respond to the audit issues will be completed by July 1, 2008.

Attachment A provides a detailed action plan for each of the six findings that identifies what has been done, what needs to be done, and a timeframe for completion.

17. Section 116365.5 requires DPH to adopt a primary drinking water standard for Hexavalent Chromium. Has the Department adopted this standard?

Statute requires the Office of Environmental Health Hazard Assessment (OEHHA) to adopt a final Public Health Goal (PHG) for Hexavalent Chromium before CDPH can complete development of the Maximum Contaminant Level (MCL). In anticipation of final action by OEHHA, CDPH has completed portions of the MCL process that are independent of the PHG.

18. Section 116370 requires the department to make a finding of "best available technology" for treatment of contaminants in drinking water at the time it adopts any drinking water standard. Has the department made this finding for each standard? If so, please provide a list of BAT.

In accordance with regulation (California Code of Regulations, Section 64447), CDPH has established a Best Available Technology (BAT) for each contaminant with a primary drinking water MCL. **Attachment B** provides a complete list of the contaminants and associated BATs. Each of the 76 inorganic and organic contaminants has 1 or more of 13 different BATs identified, ranging from ion exchange to granular activated carbon to

reverse osmosis. In addition, the Department has a process for approving new treatment technologies that are developed after the MCLs are adopted.

19. Section 116375 requires the department to adopt regulations for the monitoring of contaminants found in drinking water, including those contaminants that may be unregulated as maximum contaminant levels. In recent weeks, it has been disclosed that some drinking water supplies contain measurable levels of pharmaceuticals and hormones. Is the department requiring monitoring for these chemicals?

Pharmaceuticals, personal care products, and endocrine disruptors (hormones) in drinking water are a legitimate concern that warrants further study, analysis, and possible actions. However, at this time, there are no consistent test methods that can be uniformly adopted. Thus, the information that comes from current monitoring may be highly variable, even for the same water supply. Efforts are under way by the U.S. Environmental Protection Agency (EPA), the U.S. Geological Survey (USGS), states, and water utilities to address these emerging contaminants. The health effects associated with trace concentrations of these contaminants remains unknown. In most cases, (based on prior work on this subject by USGS) concentrations of these materials found in finished waters are likely well below levels that would be cause for concern, from a health effects standpoint. However, further study and analysis of the health effects of these substances are certainly warranted – particularly, since definitive health effects information for some of these substances is currently lacking.

What other non-regulated chemicals is the department requiring to be monitored?

At this time, the Department does not have statewide requirements in place to monitor for non-regulated chemicals. CDPH's regulations (issued on a case-by-case basis when monitoring of specific contaminants is required) required certain water systems to monitor one-time for a special category of contaminants called "unregulated chemicals for which monitoring is required" (UCMRs). The UCMR monitoring was used to collect data for contaminants suspected to be present in drinking water, but did not have Maximum Contaminate Levels (MCLs). This information gathering was for determining the occurrence of the contaminant in California. As an example, UCMR monitoring was done for perchlorate to assist in developing the MCL regulation. CDPH retains the authority to issue such regulations. In addition, CDPH has required site-specific monitoring for water supplies that are considered potentially vulnerable to multiple contaminants.

CDPH has established health-based advisory levels, called "notification levels." These are used to provide information to public water systems and others about certain non-regulated chemicals in drinking water that do not have MCLs. When chemicals are found at concentrations greater than the notification levels, certain requirements and recommendations apply. Monitoring by water systems for chemicals with notification levels is not universally required, but certain water systems that detected chemicals during UCMR monitoring or site-specific monitoring have been required by CDPH to

continue monitoring for these chemicals. If these chemicals are identified in drinking water supplies, CDPH recommends that the water system notify its customers of the findings and remove the source from service if the concentrations are above a specified level.

- 20. The disinfection of drinking water is an important step to reduce biological contaminants. However, it has been reported that byproducts from the disinfection of drinking water may pose a threat to public health in and of themselves. For example, the chlorination of drinking water can produce Trihalomethanes (THMs) which pose a risk to the health of pregnant women and fetuses.**

What action has DPH taken to reduce levels of THMs in drinking water? Is there an enforceable primary drinking water standard for THMs? Does the department require monitoring of public water supplies to ensure THMs do not pose a risk to health?

At the federal level, THMs and other disinfection byproducts (DBPs) have been addressed by the adoption of the Stage 1 and Stage 2 Disinfection Byproduct Rules. These rules require reductions on the maximum levels of DBPs allowed in water systems, and require additional monitoring for compliance. Stage 2 DBP rules moves from a system wide annual average (Stage 1) to a locational running annual average for THMs. CDPH expects Stage 2 DBP rules to be adopted July 2009. In California, CDPH has adopted the Stage 1 DBP Rule. CDPH has been working with water systems to install new treatment technologies that result in lower DBPs being delivered to the system customers. CDPH is adopting the Stage 2 DBP Rule. EPA is responsible for enforcing the Stage 2 DBP requirements until the regulation is adopted.

The Stage 1 DBP Rule established an MCL for THMs of 80 parts per billion (ppb) based on an annual average throughout a water system. CDPH requires monitoring in conformance with DBP regulations that specify quarterly sampling at a specified number of locations within the water distribution system.

- 21. How many violations of state drinking water standards has the department found? Has the public been notified of those violations? Are there plans to allow access via a website?**

According to the 2006 Annual Compliance Report to EPA (the latest date for which information is available); there were 980 MCL violations and 1,252 monitoring violations for a total of 2,232 drinking water standard violations concerning water quality in California. These numbers do not include violations for other non-water quality related issues, such as source water capacity, water system construction standards, direct additives, cross connections, or fluoridation reporting.

All MCL violations require public notification in accordance with drinking water regulations. Five violations occurred during 2006 by four water systems for failing to

notify their customers of an MCL violation. The 2006 and prior years Annual Compliance Reports are available via the CDPH website:

<http://www.cdph.ca.gov/certlic/drinkingwater/Pages/Publications.aspx> .

- 22. Section 116470 requires public water systems, as a condition of receiving a permit from DPH, to issue “consumer confidence reports” to disclose to the public the types and amounts of contaminants in those systems. It also requires each water system to describe those actions it will take to reduce contaminants in drinking water. Are all water systems issuing those reports? Have they described the actions they are taking to reduce contaminants to meet public health goals?**

Water systems are issuing Consumer Confidence Reports (CCRs) as required by regulation, or CDPH cites them as part of its enforcement program.

The CCR regulations also require water systems with more than 10,000 service connections that detect contaminants above their public health goals (PHGs) to provide reports every three years and to hold public hearings regarding their reports. Water systems that are required to prepare PHG reports are submitting them to CDPH and developing action plans for PHG compliance.

- 23. With population growth and fluctuating availability of water supplies, water agencies increasingly are looking to re-using or “recycling” water as a way to extend water supplies. At the same time, there are significant public concerns of the use of recycled water and its impacts on public health and the environment. Has the department taken any actions to regulate the use of recycled water to protect public health and the environment? If so, please describe those actions taken to date.**

CDPH has taken several actions to regulate the use of recycled water. CDPH adopted Water Recycling Criteria (California Code of Regulations, Section 60301, et seq.) to protect public health in the use of recycled water. CDPH also executed a memorandum of agreement in 1996 with the State Water Resources Control Board and the nine Regional Water Quality Control Boards to address coordination of procedures for the evaluation and permitting of recycled water projects. CDPH is developing regulations governing projects using recycled water for groundwater recharge. CDPH does not have jurisdiction over environmental protection associated with recycled water.

- 24. The department relies on fees, fines, and penalties to fund its activities under the Safe Drinking Water Act. How much in the way of fines and penalties does the department levy in a given year?**

During the past five years, the average penalty revenue was \$27,700 per year. It has ranged from a low of \$14,300 (FY 2006-07) to a high of \$42,650.98 (FY 2004-05).

Typically, CDPH places water systems in violation under compliance orders with specific milestones to correct water quality deficiencies, resulting in funding that would be derived from fines and penalties being used to improve the water system infrastructure. Many water systems are disadvantaged and the funding is better used to correct water quality deficiencies that ensure consumers are supplied drinking water that meet requirements.

The fees for the department is set in statute based on the size of the system, and haven't been revised since the late 1980s. Given the public's concerns over clean drinking water, should the fees be adjusted to ensure the Department can cover its costs?

CDPH is reviewing its fee structure to ensure that adequate funding is available to perform CDPH responsibilities including permits, inspections, monitoring, and performance of other oversight responsibilities related to public water systems. If the Department determines that a revision to these fees are necessary, it would be proposed through the annual budgetary process.

25. How much LLRW is generated in the state annually? What are the sources of LLRW by percentage and tonnage? Which generators generate waste with the highest radioactivity?

On average (2003-2007) about 167,447.88 cubic feet of low-level radioactive waste (LLRW) LLRW are generated in California annually. LLRW is tracked by radioactivity and cubic feet, not by weight. The sources of LLRW are: government, 10 percent; utilities, 50 percent; academic and medical institutions, 5 percent; and industry, 25 percent. Government and utility generators produced 93 percent of the higher level Class B and C waste in California over this reporting period.

26. Where is LLRW generated in the state disposed? How much waste is stored onsite at academic and research institutions, nuclear power facilities and the like? Does the department track the generation and/or disposal of LLRW or does it rely on generators to track that information?

The current disposal sites for low-level radioactive Class A waste are Clive, Utah and Barnwell, South Carolina. Barnwell is the only approved disposal site for the Class B and C low-level waste generated in California. Barnwell will no longer accept LLRW from non-compact states after June 30, 2008. Reports from LLRW generators required for monitoring and tracking purposes have been submitted to the CDPH Radiologic Health Branch (RHB) covering 2003 to 2007. Generators are responsible for submitting specified data regarding the LLRW generated and disposed from their operations. Inspectors from RHB review waste handling and storage procedures and transfer records during regular inspections. Records of LLRW disposal are also reviewed at the termination of a license. Both state and federal regulations require that transfer of waste be documented using an approved U.S. Nuclear Regulatory Commission (NRC) form, which includes receipt of the waste shipped.

27. How does the department fund the costs of regulation of LLRW? How much does it spend annually on LLRW regulation?

CDPH funds the cost of regulating LLRW through the fees charged to registrants, licensees, and permit holders. These activities include inspection, license applications review, emergency response, investigation of complaints and allegations of violation, and follow-up of routine inspections and investigations. CDPH does not track LLRW waste activities separately from other program activities, but would estimate the annual cost at approximately \$700,000.

28. What standard does the department use in ensuring the LLRW that is cleaned up, stored, or disposed is handled in a manner that protects public health and the environment?

CDPH requires each site to have an individual clean-up procedure to achieve the lowest technically feasible level. That level must always be lower than the federal standard of 25 millirem/year. Typically, this procedure has enabled a clean-up (decommissioning) level that is often well below this federal criterion.

The vast majority (over 85 percent) of CDPH's licensees are not required to have a formal decommissioning plan, and have essentially no potential for leaving measurable, residual contamination at the site because they use only sealed sources, with no evidence of any breach, and with evidence of appropriate disposal or transfer; or because they only used short-lived medical nuclides that have decayed to non-detectable levels prior to release.

CDPH requires the remaining licensees to submit a comprehensive decommissioning plan including a historical site assessment (HAS), commensurate with the potential residual risks at the site. CDPH reviews these plans for completeness, technical competency, and compliance with the requirement to make a "reasonable effort [to] eliminate residual radioactive contamination" (California Code of Regulations Section 30256(k)).

CDPH relies on nationally accepted guidance developed by federal agencies to evaluate the submitted plans, including

- Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM, August 2000, by NRC, EPA, DOE) and other referenced documents in the manual; and
- Consolidated Decommissioning Guidance (NUREG-1757, by NRC).

CDPH communicates frequently with the licensees throughout the decommissioning process and makes site visits or takes split samples with the licensee to ensure compliance with the decommissioning plan.

CDPH maintains transparency by communicating frequently with the licensee during the process, and by using nationally accepted (and publicly available) guidance documents to evaluate the process.

29. What are the reasons that the department is behind in its promulgation of regulations? What steps are you taking to expedite the promulgation of regulations?

I recognize that there are delays in the development and processing of regulations. Delays result from the need to manage competing and often shifting regulatory priorities, the level of complexity of the regulatory packages, pending legal disputes, and external pressures from advocacy groups, industry, and other parties with an interest in the regulations.

Prior to the Legislative Analyst Office's (LAO) analysis, CDPH identified streamlining its regulatory process as a priority for 2008. As a result, improving the regulatory process is included in the CDPH strategic plan. CDPH is undertaking a complete review of the current process and developing recommendations for process improvements. I am personally committed to implementing an improved regulation development process that ensures we develop regulations timely.

As an interim measure, in March 2008, CDPH established a multidisciplinary team approach to expedite the processing of three critical regulations packages under development in the Radiologic Health Branch. Finally, CDPH is implementing a project management approach to regulation development. As part of that effort, CDPH is triaging proposed regulations to separate those that are required by law and those designed to clarify or update existing regulations although the revision is not required by law. This will help prioritize the regulatory packages that require more immediate attention and ensure we address the most urgent regulatory packages first.

30. How are you ensuring that local agencies, health providers and other entities are implementing current laws?

Each of CDPH's five program Centers is responsible for enforcing applicable state and federal laws and regulations associated with its programs. Enforcement activities are program specific.

CDPH staff engages on a regular basis with the external stakeholders in their respective program areas through a variety of mechanisms including meetings, teleconferences, and policy conferences on the implementation of laws and regulations that may affect their respective fields. Also, staff regularly circulates programmatic guidance as well as "question and answer" documents to the regulated community on issues that the Department is involved in to ensure that the community is kept up to date.

31. What is the department's process to review existing regulations to ensure that they are up to date and take into account changes in technology and research?

As mentioned previously, the Department is reviewing its pending regulatory packages and will prioritize those packages that require more immediate promulgation. In addition to this process to address the pending regulatory workload, CDPH uses internal and external expertise to ensure regulations are updated and take into account changes in technology and research. Each Center manages and consults internally concerning updating regulations. Program staff review existing regulations continuously and make recommendations to management. Staff are encouraged and supported to maintain proficiency of technology and research activities within their assignments. Further, CDPH works with stakeholders and advisory committees to address regulation issues. For example, the Radiologic Technology Certification Committee (RTCC) is charged with assisting, advising, and making recommendations for the establishment of regulations necessary to ensure the proper administration and enforcement of the Radiologic Technology Act.

32. What is the status of the department's effort to enforce regulations regarding radiologic technology schools? Does the department plan to revise the regulations? If so, by when?

Currently, the Department considers Radiologic Technology Schools (RT) accredited and in good standing with the Joint Review Committee on Education in Radiologic Technology (JRCERT), an accreditation body approved by the federal Department of Education, to afford the same protection to the public as the standards provided under law and regulation. RT schools are inspected to ensure they continue to provide adequate education and training of future technologists.

CDPH will revise regulations upon final recommendation of the Department's advisory committee, the Radiologic Technology Certification Committee (RTCC). As required by statute, the Department must consider the recommendations of the RTCC and cannot independently promulgate regulations until the committee has considered and approved the changes. RTCC formed subcommittees to review existing standards for:

- Limited Permit X-ray Technician (XT) schools,
- X-ray Bone Densitometry XT schools,
- Fluoroscopy schools,
- Dental Laboratory schools,
- Diagnostic Radiologic Technology schools,
- Therapeutic RT schools, and
- JRCERT requirements,

As of March 2008, RTCC considered and approved only the subcommittee report on Dental Laboratory schools. These regulations will be revised by March 2009. RTCC will hear from the remaining six subcommittees at its public meeting later this year.

CDPH anticipates that the RTCC will complete its review and approved recommended changes in late 2009.

33. What challenges does the department face regarding recruitment and retention of staff? Which classifications have the highest vacancy rates? What steps are you taking to address these challenges?

Like most state departments, CDPH faces challenges retaining the staff that are at or near retirement age. Additionally, the Department has specialized classifications that are difficult to fill.

Recruiting and retaining Public Health Microbiologists has been a major challenge to the state's infectious disease laboratories due to significant disparities between state salaries and salaries offered in county public health laboratories or the private sector. Non-competitive salaries, the high cost of living in the San Francisco Bay Area where the Richmond laboratory is located, and the highly specialized nature of the work combine to make the positions difficult to fill.

Recruiting and retaining staff in other classifications, especially specialized classifications such as nurses, has required aggressive recruitment techniques (e.g., mailing post cards to registered nurses, attending conferences with state staff prepared to conduct exams on site, requesting a pay differential for specified classifications).

CDPH is undertaking an evaluation of its workforce including skill set and retention strategies and will then develop a methodology for increasing retention rates. Additionally, the Department has included in its first Strategic Plan a goal to improve quality of the workforce and workplace environment.

The positions that are generally hardest to recruit and retain are scientist and research classifications including:

- Research Scientist
- Animal Technician
- Research Scientist I/Epidemiology Sciences
- Research Scientist Supervisor/Microbiological Sciences
- Research Managers
- Health Facility Evaluator Nurses

CDPH is undertaking a variety of efforts to recruit for difficult to fill positions including:

- Accepting applications on a continuous basis and coordinating testing bi- annually with semester graduation,
- Coordinating testing dates/locations to meet college graduates on campus and ensure list eligibility by graduation, and
- Coordinating with the American Public Health Association Annual Conference to recruit candidates. APHA is attended by public health professionals from across the nation.

In addition, CDPH is an active participant on the California Health and Human Services Agency (CHHS) Succession Planning and Management Workgroup, comprising CHHS Directors, Chief Deputy Directors, Administration Deputy Directors, Personnel Officers, Training Officers, and Exam Supervisors. Since 2004, this workgroup has been actively engaged in moving CHHS and its member departments forward in workforce planning and succession planning. CHHS recognized the need to reach out and bring in new talent from outside of state government to fill the ever-increasing vacancies within first-level management ranks. With the completion of the statewide, open Staff Services Manager I examination, CHHS and its departments will now look at other classifications for which an open examination may be offered. .

CDPH is also an active participant in a custom-designed CHHS Supervisor's Academy that meets the mandatory Government Code section 19995.4(b) training requirement. The curriculum includes the requisite training on the role of a first-line supervisor relative to performance, progressive discipline, etc. Most importantly, the curriculum has been designed around the CHHS core competencies and sets a clear vision of management expectations for all Agency management.

34. What proportion of management and other staff are expected to retire in the next five years? What is DPH doing regarding succession planning to fill vacancies due to expected retirements?

CDPH has 585 managerial positions. Of those, 372 staff (or 64 percent of managerial staff) are 50 years of age or older. Of CDPH's remaining 3379 staff, 1190 (or 35 percent of non-managerial staff) are 50 years of age or older.

CDPH has taken a number of steps toward succession planning. These include:

- Hiring a contractor to develop a succession planning model,
- Convening a working group of staff throughout the Department to develop a workforce planning and leadership development approach for the Department. (A subset of these activities focus on succession planning. CDPH is using materials developed by the Department of Personnel Administration and the Department of Social Services as guiding principles to develop CDPH's succession planning;
- Establishing an office on workforce planning and leadership development. This office will implement the succession planning model on an on-going basis;
- Partnering with the Public Health Institute to develop a leadership institute for employees working in public health; and
- Sending employees to the national Public Health Leadership Institute, which trains and mentors emerging leaders.

**2007 Office of State Audits and Evaluation (OSAE)
Licensing and Certification Fee Methodology Review
L & C Action Plan**

OSAE Audit Findings:

OSAE states that "the following corrective actions are necessary because of unsupported or inaccurate data, and poor timesheet design:

1. Modify the existing timesheet format.
2. Develop written procedures for the Headquarters staff timesheet adjustment process.
3. Provide training to staff.
4. Adequately support timesheet adjustments.
5. Reconcile the timesheet data to the accounting data monthly.
6. Maintain adequate supporting documentation to support all data used to calculate the fees."

L&C Action Plan:

1. Modify the Existing Timesheet Format:

What has been done? The timesheet was significantly modified during the correction period last spring. Additional modifications have been made to include a process for identifying and correcting errors on a monthly basis.

What needs to be done?

- Surveyor timekeeping timesheet format to be modified to capture number of surveys.
 - Meet with Headquarters staff and Timekeeping Task Force to determine if this is an item that can be addressed prior to automation of timekeeping.
- Use Timekeeping data for development of Licensing Fees.
 - Meet with Fee Development Unit to clarify fee methodology.

When will it be done?

Estimated Completion Date: June 30, 2008

2. Develop Written Procedures for the Headquarters staff timesheet adjustment process:

What has been done? L&C Headquarters staff have met to identify responsibility for writing procedures for the timesheet correction process.

What needs to be done?

- Develop written procedures for timekeeping correction processes:
 - Develop Headquarters staff procedures for conducting monthly reconciliation of data.
 - Develop Headquarters staff procedures for reconciling information on the Monthly Surveyor Verification Form (MSVF).

When will it be done?

Estimated Completion Date: May 2008.

3. Provide Training to Staff:

What has been done? L&C Headquarters staff have met to identify staff responsible for providing training to L&C surveyors on surveyor timekeeping process.

What needs to be done?

- Provide Surveyor Timekeeping Training
 - Develop training packet/session and confirm accuracy and applicability.
 - Schedule General Timekeeping Training to all surveyors.

When will it be done?

Estimated Completion Date: May 2008.

4. Adequately Support Timesheet Adjustments:

What has been done? L&C Headquarters staff have written procedures on the methodology used to make surveyor timesheet corrections.

What needs to be done?

- Ensure that all current and future timesheet corrections are adequately supported, including changes made, purpose of changes, documentation supporting the need for the change, and management approval.

When will it be done?

Estimated Completion Date: May 2008.

5. Reconcile the Timesheet Data to the Accounting Data:

What has been done? L&C Headquarters staff have met to determine the steps necessary and to determine who will be responsible for reconciling surveyor timesheet data to the accounting data.

What needs to be done?

- Perform monthly reconciliations of the timesheet data and the accounting data.
 - Headquarters staff to document steps for performing monthly reconciliations of the timesheet data and the accounting data.

When will it be done?

Estimated Completion Date: June 2008.

6. Maintain Adequate Supporting Documentation to Support all Data used to Calculate the Fees

What has been done? L&C formed a taskforce which began working in February 2008, to document the fee calculation process step-by-step to include identification of all supporting documentation and criteria used to generate data. This task force will develop three end products, 1) a high level summary to describe the process complete with tables that identify source documents used, 2) step-by-step instructions to calculate the fees and procedures to establish and maintain source documentation, and 3) an enhanced timekeeping process to capture information on survey counts for use in determining average standard hours by activity and facility type.

What needs to be done?

- Complete our research on historical standard hours and identify the methodology used to calculate these
- Complete the summarized description
- Complete the step-by-step instructions

When will it be done?

Estimated completion date: July 1, 2008.

Best Available Technologies (BAT)

Article 12. Best available technologies (BAT)

§64447. Best available technologies (BAT) – Microbiological Contaminants.

The technologies identified by the Department as the best available technology, treatment techniques, or other means available for achieving compliance with the total coliform MCL are as follows:

- (a) Protection of wells from coliform contamination by appropriate placement and construction;
- (b) Maintenance of a disinfectant residual throughout the distribution system;
- (c) Proper maintenance of the distribution system; and
- (d) Filtration and/or disinfection of approved surface water, in compliance with Section 64650, or disinfection of groundwater.

§64447.2. Best available technologies (BAT) - inorganic chemicals

The technologies listed in Table 64447.2-A are the best available technology, treatment techniques, or other means available for achieving compliance with the MCLs in table 64431-A for inorganic chemicals.

**Table 64447.2-A
Best Available Technologies (BAT)
Inorganic Chemicals**

<u>Chemical</u>	<u>Best Available Technologies (BATs)</u>
Aluminum	10
Antimony	2, 7
Arsenic	1, 2, 5, 6, 7
Asbestos	2, 3, 8
Barium	5, 6, 7, 9
Beryllium	1, 2, 5, 6, 7
Cadmium	2, 5, 6, 7
Chromium	2, 5, 6 ^a , 7
Cyanide	5, 7, 11
Fluoride	1
Mercury	2 ^b , 4, 6 ^b , 7 ^b
Nickel	5, 6, 7
Nitrate	5, 7, 9
Nitrite	5, 7
Selenium	1, 2 ^c , 6, 7, 9
Thallium	1, 5

^aBAT for Chromium III only.

^bBAT only if influent mercury concentrations <10 ug/L.

^cBAT for Selenium IV only.

Key to BATs in Table 64447.2:

1 = Activated Alumina

2 = Coagulation/Filtration (not BAT for systems < 500 service connections)

3 = Direct and Diatomite Filtration

4 = Granular Activated Carbon

5 = Ion Exchange

6 = Lime Softening (not BAT for systems < 500 service connections)

7 = Reverse Osmosis

8 = Corrosion Control

9 = Electrodialysis

10 = Optimizing treatment and reducing aluminum added

11 = Chlorine oxidation

§64447.4. Best Available Technologies (BATs) - Organic Chemicals

The technologies listed in Table 64447.4-A are the best available technology, treatment technologies, or other means available for achieving compliance with the MCLs in Table 64444-A for organic chemicals.

Table 64447.4-A
Best Available Technologies (BATs)
Organic Chemicals

<i>Chemical</i>	<i>Best Available Technologies</i>		
	<i>Granular Activated Carbon</i>	<i>Packed Tower Aeration</i>	<i>Oxidation</i>
(a) Volatile Organic Chemicals (VOCs)			
Benzene	X	X	
Carbon Tetrachloride	X	X	
1,2-Dichlorobenzene	X	X	
1,4-Dichlorobenzene	X	X	
1,1-Dichloroethane	X	X	
1,2-Dichloroethane	X	X	
1,1-Dichloroethylene	X	X	
cis-1,2-Dichloroethylene	X	X	
trans-1,2-Dichloroethylene	X	X	
Dichloromethane		X	
1,2-Dichloropropane	X	X	
1,3-Dichloropropene	X	X	
Ethylbenzene	X	X	
Methyl- <i>tert</i> -butyl ether		X	
Monochlorobenzene	X	X	
Styrene	X	X	
1,1,2,2-Tetrachloroethane	X	X	
Tetrachloroethylene	X	X	
Toluene	X	X	
1,2,4-Trichlorobenzene	X	X	
1,1,1-Trichloroethane	X	X	
(b) Other Organic Chemicals			
<i>Chemical</i>	<i>Best Available Technology</i>		
	<i>Granular Activated Carbon</i>	<i>Packed Tower Aeration</i>	<i>Oxidation</i>
1,1,2-Trichloroethane	X	X	
Trichlorofluoromethane	X	X	
Trichlorotrifluoroethane	X	X	
Trichloroethylene	X	X	
Vinyl Chloride		X	
Xylenes	X	X	

**(b) Synthetic Organic Chemicals
(SOCs)**

Alachlor	X	X	
Atrazine	X		
Bentazon		X	
Benzo(a)pyrene	X		
Carbofuran	X		
Chlordane	X		
2,4-D	X		
Dalapon	X		
Di(2-ethylhexyl)adipate	X	X	
Dinoseb	X		
Diquat	X		
1,2-Dibromo-3-chloropropane	X	X	
Di(2-ethylhexyl)phthalate	X		
Endothall	X		
Endrin	X		
Ethylene Dibromide	X	X	
Glyphosate			X
Heptachlor	X		
Heptachlor epoxide	X		
Hexachlorobenzene	X		
Hexachlorocyclopentadiene	X	X	
Lindane	X		
Methoxychlor	X		
Molinate	X		
Oxamyl	X		
Picloram	X		
Pentachlorophenol	X		
Polychlorinated Biphenyls	X		
Simazine	X		
Thiobencarb	X		
Toxaphene	X	X	
2,3,7,8-TCDD (Dioxin)	X		
2,4,5-TP (Silvex)	X		

NS
PERATA

APR 03 2008

April 1, 2008

The Honorable Don Perata, Chairman
Senate Rules Committee
California Legislature
State Capitol, Room 420
Sacramento CA 95814-4900

Dear Mr. Perata:

Thank you for the opportunity for confirmation as a member of the Pacific State Marine Fisheries Commission (PSMFC). My brief responses to your questions follow.

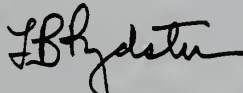
Short-term goal: my short-term goal is to attend all instate and annual meetings of the PSMFC and to represent the interests of California citizens in those meetings while at the same time giving careful consideration to the effect of our actions on the sustainability of California marine fishery resources. The opportunity for representation occurs in instate meetings when the agenda for the annual meeting is formulated and in the annual meetings at the close of fishery informational presentations and in the business meeting when position papers are developed and adopted, generally for use by federal representatives.

Long-term goal: I aim to continue to be actively involved in the scientific study and management of West Coast marine fishery resources so that I can capably represent California marine fishing interests in PSMFC meetings and other PSMFC activities. I am currently a marine fishery advisor and work very closely with the Department of Fish and Game, Fish and Game Commission, Pacific Fishery Management Council, and National Marine Fisheries Service, primarily on issues associated with salmon and groundfish research, management and endangered species recovery. I plan to continue to work with these agencies on marine fishery issues for as long as I am able to do so.

Most significant accomplishments: I have attended and participated in all instate and annual business meeting during my tenure, which began in 2005. The annual meetings were held in Girdwood, Alaska, Portland, Oregon and San Diego, California. I made motions that passed in all three meetings. These generally pertained to staff direction relative to various fishery management issues and administrative matters. I was honored to chair the awards ceremony and the business meeting agendum at the San Diego meeting in September of last year.

I look forward to hearing from you regarding my upcoming confirmation hearing.

Yours truly,



LB Boydston
Fishery Advisor

Senate Rules Committee

APR 07 2008

Appointments



State of California - The Resources Agency

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF FISH AND GAME

1416 9th Street, Suite 1205
Sacramento, CA 95814
916.653.7667
<http://www.dfg.ca.gov>



April 16, 2008

The Honorable Don Perata
Chairman, Senate Rules Committee
State Capitol Room 420
Sacramento, CA 95814

Attn: Ms. Nettie Sablehaus

Dear Senator Perata:

Thank you for allowing me to share some of my priorities as you and the members of the Senate Rules Committee consider my confirmation as a Commissioner of the Pacific States Marine Fisheries Commission.

Fish and Game Code Sections 14000 through 14107 delineate the purpose and operations of the compact between the States of Alaska, Idaho, Washington, Oregon, and California as the entity named "Pacific States Marine Fisheries Commission" (PSMFC). As potentially one of three Commissioners appointed to represent California, I'm committed to cooperating with our sister states to promote better utilization of all our fisheries, and to prevent waste and depletion of those resources on the west coast.

Of particular importance, in the aftermath of the devastating declines in prior years of Klamath Fall Chinook and this year of Sacramento River Fall Chinook salmon stocks, I will urge the PSMFC to allocate funds for salmon and steelhead habitat restoration programs within the Department of Fish and Game. Ensuring that California projects get their fair share of the available funding and that the PSMFC actively pursues available federal funding will be a top priority.

In addition, I will strongly encourage the PSMFC to seek the funding necessary to enhance and maintain several critical baseline data collection programs that provide the scientific data on which most of our fisheries management decisions are made. These programs include the west coast recreational fisheries information network (RecFIN) and the Pacific commercial fisheries information network (PacFIN) programs are maintained at current levels in all states, especially in California.

Lastly, I believe that the goal of long term resource management is ecosystem based. That becomes even more imperative as we determine how we will manage our fisheries within the challenge of global climate change. The PSMFC facilitates the data collection and warehousing of important information on

Senate Rules Committee

Conserving California's Wildlife Since 1870

The Honorable Don Perata

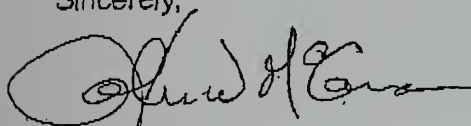
April 16, 2008

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specific fisheries, invasive species, habitat mapping and habitat values, and the economics of specific fishery industries. I commit to making a priority the multi-agency cooperative programs that are designed to gather, maintain, and disseminate fish and aquatic habitat data for California's fisheries. I can assure you that I will be working closely with my sister agencies within the State and within PSFMC to assure that centralizing access to fisheries data can be enhanced for our common need of ecosystem-based management.

Thank you again for considering my appointment as a Commissioner on the Pacific States Marine Fisheries Commission.

Sincerely,



John W. McCamman
Acting Director

cc: Senate Rules Committee Members:

Roy Ashburn

Gilbert Cedillo

Robert Dutton

Alex Padilla

John Moffatt

Deputy, Office of Legislative Affairs, Governor's Office

Chris Mower

Deputy Secretary of Legislation, Resources Agency

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SENATOR ROBERT DUTTON

SENATOR ALEX PADILLA

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DAN SAVAGE, Consultant to SENATOR CEDILLO

CHRIS BURNS, Consultant to SENATOR DUTTON

BILL MABIE, Consultant to SENATOR PADILLA

ALSO PRESENT

GUADALUPE G. ALMARAZ, Member
Agricultural Labor Relations Board

CATHRYN I. RIVERA-HERNANDEZ, Member
Agricultural Labor Relations Board

PATRICK HENNING
California State Council of Laborers

DAVID G. MAXWELL-JOLLY, Ph.D., Director
Department of Child Support Services

DAVID OPPENHEIM, Executive Director
Child Support Directors Association

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State Association of Electrical Workers

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Elevator Constructors Union

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International Union of Operating Engineers

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California Conference of Carpenters

TERRY SEABURY, Executive Director

Western Electrical Contractors Association



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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We will begin with the two members of the Agricultural Labor Relations Board. If you'd like, come up together unless you don't want to be seen together.

We've got you in male/female order. We could reverse that.

MR. ALMARAZ: Good afternoon, Chairman Perata. I'm Guadalupe Almaraz. I'm the Chair of the ALRB. I have an opening statement.

Chairman Perata and Committee Members, I am deeply honored to appear before you today.

CHAIRMAN PERATA: Excuse me. Do you have any family here?

MR. ALMARAZ: I have my wife Mary.

CHAIRMAN PERATA: Welcome.

MR. ALMARAZ: Thank you. My four children and my two grandchildren weren't able to make it. They're here in spirit.

Chairman Perata and Committee Members, I am deeply honored to appear before you today seeking your support to my confirmation as Chairman of the Agricultural Labor Relations Board.

As you are aware, the ALRB was created in 1975 to encourage and protect the rights of agricultural employees to full freedom of association, self organization, and designation of representatives of their choosing to negotiate the terms and

1 conditions of their employment, and to be free from
2 interference, restraint or coercion in the designation of such
3 representatives, or in self organization, or in other concerted
4 activities for the purpose of collective bargaining or mutual
5 aid and protection.

6 The right to participate in an electoral process
7 whereby one chooses to be or not to be represented for purposes
8 of collective bargaining is, I am sure, the only opportunity
9 many farmworkers have to engage in an electoral process. This
10 provides farmworkers a right to speak by way of vote on issues
11 affecting their day-to-day livelihood.

12 I fully recognize the importance of this process,
13 and as Chairman of the Board I am committed to ensuring that the
14 process is free from interference, restraint, or coercion.

15 I have devoted the majority of my adult life to
16 working as a public servant. I was employed by the Division of
17 Labor Standards Enforcement for approximately 30 years. The
18 mission of DLSE is to promote and protect the rights of the
19 workers of the State of California, and to protect employers who
20 comply with the law from those who attempt to gain competitive
21 advantage at the expense of their workers by failing to comply
22 with minimum labor standards.

23 During my tenure with DLSE, I worked in several
24 capacities, including investigator, hearing officer, district
25 supervisor, and lastly as Deputy Chief of the Division. I
26 believe the experience gained at DLSE, especially as a field
27 investigator and later as a hearing officer, will enable me to
28 bring a broad perspective to the board, especially when we

1 deliberate on cases that require review.

2 In addition, my short tenure with the Department
3 of Fair Employment and Housing provided me the opportunity to
4 gain experience in the investigation of retaliation complaints.
5 While the retaliation complaints investigated and resolved by
6 the board are distinct from that investigated by DFEH, the basic
7 understanding of what constitutes retaliation in an employment
8 context is an asset that I bring to the board.

9 On a personal level, I am humbled and honored to
10 be appointed as the Chair of the board. I consider myself to be
11 a very simple person, one who was taught at a very young age
12 that one's value is measured by one's integrity and hard work.
13 I have attempted to live by these values my entire life, both at
14 home and at work.

15 My parents moved to Kern County in the late
16 1930s, and they met while working in the agricultural fields
17 around Shafter, California. My father, after returning from
18 serving in the Army during World War II began employment in the
19 construction industry. He was a member of Laborers Local 220 in
20 excess of 50 years, a milestone that he was very proud of.

21 My mother's full time job was raising twelve
22 children, six boys and six girls. However, in order to keep
23 the family financially -- help the family financially, my mother
24 as well as many of us children worked in the fields during
25 weekends and school vacation. Hard work and integrity was a
26 lesson.

27 The fact that I have first-hand experience
28 working in the fields as a teenager may not be significant to

1 the position for which I now seek your support. However, the
2 fact that 40 years later I am being considered for confirmation
3 to the highest position in the agency that is responsible for
4 ensuring that workers are free from interference, restraint or
5 coercion, as they seek freedom of association, self
6 organization, and designation of representatives of their own
7 choosing to negotiate the terms and conditions of their
8 employment is truly a message in itself.

9 I am grateful for the opportunity to come before
10 you, and I request your support in confirmation as Chair of the
11 board. Thank you very much, Chairman Perata and fellow
12 Committee Members.

13 CHAIRMAN PERATA: Thank you, sir.

14 MR. ALMARAZ: May I have a glass of water?

15 [Laughter.]

16 CHAIRMAN PERATA: You may. You've earned at
17 least that much.

18 I feel compelled to ask you, do you ever get out
19 much to see other things? I mean, you come from Shafter, Kern
20 County. That's a small, little community.

21 MR. ALMARAZ: We visit some airports.

22 [Laughter.]

23 MR. ALMARAZ: Highways, trains.

24 CHAIRMAN PERATA: Did you ever see a
25 double-decker on the freeway?

26 [Laughter.]

27 MS. RIVERA-HERNANDEZ: I will skip discussion of
28 the operations that the Chair has covered.

1 But five years ago, I sat before this Committee,
2 and I committed to safe guarding the rights of the over 600,000
3 farmworkers that power this state's agricultural machine and
4 that feed the nation. I promised to follow the Agricultural
5 Labor Relations Act, and to take the steps necessary to carry
6 out the Act's purpose.

7 To this end, the board has conducted elections
8 for over 7800 farmworkers. We've provided remedies to hundreds
9 more, including for the first time distributions from the
10 Agricultural Employee Relief Fund, which has provided over
11 \$249,000 to workers who thought they would receive nothing.

12 The board has drafted regulations to implement
13 the Mandatory Mediation and Conciliation Act. To that end, we
14 sent five cases through this process. In three of those cases,
15 the parties voluntarily reached agreement. In two of those
16 cases, the union had been the certified representative for over
17 20 years.

18 What I didn't know five years ago is what I would
19 receive from service on this board. As an attorney, I have been
20 constantly challenged by the cases of first impression, and I'm
21 proud of the certainty that that will provide for the future.

22 As a manager, I've been absolutely affected by
23 the staff of the ALRB. Many have been with the agency for their
24 entire careers. These are individuals who will wake at 2:00
25 a.m. and work for hours on end in an attempt to conduct an
26 election properly, and have done so recently four weeks in a
27 row. This is something that I had not experienced with the
28 numerous agencies that I had previously worked with before

1 coming to the board. For them, it is not a job; it is a life
2 style.

3 And as the daughter of parents who grew up in the
4 fields, I've gained a new appreciation for the difficulties
5 inherent within the agricultural industry, as well as for the
6 struggles of its workers. I promise you now, as I did then,
7 that I do not take the responsibilities of a board member
8 lightly. I will continue to be open-minded in my approach and
9 fair in my application.

10 I know there are still challenges to overcome and
11 many issues to be addressed, and I hope to be a part of that
12 process.

13 I respectfully request your confirmation of my
14 appointment, and I'm happy to answer any questions.

15 CHAIRMAN PERATA: You don't have to, but do you
16 want to introduce any family?

17 MS. RIVERA-HERNANDEZ: Yes. My husband, Ignacio
18 Hernandez, is here.

19 CHAIRMAN PERATA: He was here yesterday, too.

20 [Laughter.]

21 MS. RIVERA-HERNANDEZ: Yes, and for the record, I
22 disagree with him very often on some of the positions that he
23 takes.

24 [Laughter.]

25 CHAIRMAN PERATA: All right, we have a motion.

26 [Laughter.]

27 MS. RIVERA-HERNANDEZ: As well as my mother
28 Juanita, my mother-in-law Norma, and Jessie.

1 CHAIRMAN PERATA: Welcome.

2 MS. RIVERA-HERNANDEZ: Of course, our fellow
3 board member, Genevieve Shiroma.

4 CHAIRMAN PERATA: Great.

5 Questions, Members?

6 I have one. I think in both of your written
7 responses, you indicated that the unfair labor practices were up
8 over 40 percent. To what do we attribute that?

9 MR. ALMARAZ: Well, obviously there's more
10 collective -- there's more activity in elections now. As
11 Cathryn indicated, in the month of April there was four
12 elections, one week right after the other. So with more
13 elections taking place, there's always an increase in unfair
14 labor practice charges.

15 So, I think that the -- and the pattern seems to
16 be continuing.

17 MS. RIVERA-HERNANDEZ: I would only add that
18 that's occurring in the dairies primarily, who are -- who
19 operate 24/7 and year around.

20 CHAIRMAN PERATA: I don't often think of that in
21 that context, the cows.

22 SENATOR PADILLA: My only question, I think both
23 of you are doing a tremendous job.

24 Cathryn, you raised an important part about staff
25 and their commitment, and how many years of service a lot of
26 them have had.

27 One of the issues that we see department after
28 department, and agency after agency, and board after board, and

1 commission after commission, is at the staff level, the number
2 of staff that's eligible to retire in the next couple of years,
3 and the challenge of what we call succession planning, how we're
4 going to back-fill.

5 I think with this board in particular, despite
6 the back and forth between state law and oversight, and federal
7 law and oversight, with this board in particular, what the
8 possible impacts would be of mass retirements. How have we
9 prepared for ten years from now and beyond? Is that a subject
10 of discussion amongst you?

11 MR. ALMARAZ: It is. In fact, one of the things
12 that we're trying to do at this point, and it was done for
13 several years, my understanding is, we have an intern program
14 where we have local law students, and also local college
15 students come in and help us during summer months. And the
16 primary purpose, of course, is for them to gain experience in
17 the work that we do, and hopefully have an interest in work.
18 And we encourage them to take exams when there's examinations
19 for the positions that we have.

20 The other thing that we are doing is, we're
21 looking into job loaning with other agencies. We actually met
22 with the Director of EDD about three or four weeks ago. And
23 we're looking at that program so that they would loan us some
24 staff for a very short period of time from EDD, and we would
25 hope that those individuals would -- would at some point want to
26 leave EDD and come to us, especially the young ones.

27 Lastly, we -- our -- like many agencies, we're
28 looking at our retired annuitants to help train new people,

1 because they are a tremendous resource. We've done that at DIR
2 when I was there, and we are continuing to do that here at the
3 ALRB.

4 MS. RIVERA-HERNANDEZ: And we've tried to expose
5 staff that is currently there out in the regions as much as
6 possible, given the size it is possible, in the regional offices
7 to what the other staff are doing in the event that they are
8 able to take over additional responsibilities.

9 We've also established a case management and
10 tracking system to hopefully be prepared in better financial
11 times to sort of fill some of the gaps that we have, so those
12 people can be trained and move up as well.

13 SENATOR PADILLA: It's one thing to have a plan
14 to back-fill the expertise, the experience, but in this
15 particular case, the passion for this work -- conducting those
16 federal elections -- isn't something you teach in law school.

17 MS. RIVERA-HERNANDEZ: Right, absolutely.

18 SENATOR DUTTON: Good afternoon. Just a couple
19 questions.

20 While it appears as though in the first few
21 months of this year there seems to be an increase, but the
22 trending seems to be actually going in the other direction,
23 which would kind of indicate that you've been doing a really
24 good job from what it was intended to back in its early
25 beginnings.

26 According to these responses that we got, you
27 indicated that the workload has actually declined, maybe not in
28 this last four years, but when it started, there was like 471

1 cases a year -- this is going back to 1996 -- of unfair labor
2 practices. Today there's like 156 average. At least that's the
3 numbers we're getting.

4 So my question is, I guess right now is it
5 because the federal or National Labor Code, is it getting more
6 up to speed to where California is? Are there things that are
7 all ready taken care of at the federal level that wasn't there
8 before?

9 There has been some decline except for this one
10 area here in the last few months.

11 MR. ALMARAZ: Senator Dutton, actually the
12 workload we've seen has been progressively increasing in the
13 last few years.

14 But the big distinction between the National
15 Labor Relations Act and the Agricultural Labor Relations Act is
16 that the NLRB doesn't cover farmworkers. So, whatever they do
17 under the federal level, the agricultural workers don't have
18 access to -- to the election process. That's why the ALRB
19 exists.

20 SENATOR DUTTON: So, under the Federal National
21 Labor Code, there's no provisions for ag?

22 MR. ALMARAZ: Correct. The agricultural workers
23 are specifically excluded from the National Labor Relations Act.

24 SENATOR DUTTON: Why? Just because it is?

25 MS. RIVERA-HERNANDEZ: We could speculate, maybe
26 it was to get to the farm bureaus back then. I haven't looked
27 at any legislative intent or anything like that.

28 I think domestic workers were also excluded. I

1 don't know.

2 SENATOR DUTTON: You indicated that the
3 workload's increased, but also there's been a restructuring of
4 regional offices, where they've actually -- well, now there's
5 three, I guess. It says here that it was due to workload, the
6 El Centro office was downsized and resources transferred over to
7 Visalia.

8 Obviously, I don't understand. You said there's
9 an increase and yet --

10 MS. RIVERA-HERNANDEZ: There was a decrease in
11 the El Centro area, and the demand had increased so dramatically
12 that -- in the Visalia area that we had to transfer the staff up
13 there.

14 We've also experienced a 27 percent reduction in
15 staff over the same five years that we've seen the increase, so
16 we don't have staff available to be out -- to be in all the
17 areas that we used to be in, to make our services available. I
18 don't know what effect that might also be having on the
19 workload.

20 SENATOR DUTTON: Thank you. Well, I'll have to
21 recheck our numbers, because it seems to me over the last five
22 years, it looks like it's pretty consistent, but it's down
23 substantially from when it was first formed.

24 MR. ALMARAZ: This year alone we had 196 charges,
25 unfair labor practice charges. Last year we had 159.

26 SENATOR DUTTON: And the year before, we had 167.

27 MS. RIVERA-HERNANDEZ: It's also -- it might be
28 helpful also for the purposes of an election, even though the

1 number by itself is small, each of them requires on average
2 about 100 days to process from the time the election is held to
3 go through the challenge ballot, as well as any election
4 objections process. So, even the addition of a few elections in
5 a year is a dramatic increase for our staff.

6 SENATOR DUTTON: All right, thank you.

7 CHAIRMAN PERATA: Gilbert?

8 SENATOR CEDILLO: You may recall SB 1156
9 (Burton), AB 2596 (Wesson), the legislation that required
10 mandatory mediation. It was a tremendous effort to realize that
11 the procedure applies where a union, certified bargaining unit,
12 and an employer with more than 25 employees are unable to reach
13 a contract agreement.

14 My questions are, how often and how many times
15 has that mandatory mediation process been invoked either by the
16 employer and by the certified bargaining units? Do you believe
17 the mandatory mediation process has been working as intended?
18 If not, what modifications to the process would you recommend?

19 MS. RIVERA-HERNANDEZ: To answer your first
20 question, the process has been invoked five times during --
21 since its implementation.

22 SENATOR CEDILLO: Five times in total?

23 MS. RIVERA-HERNANDEZ: Yes, but there were three
24 years of the five years that I've been there where it was being
25 challenged in the courts as unconstitutional. So, during
26 that -- that period of time, we didn't see cases because it was
27 being litigated. It took quite a while, as you can imagine.

28 So, I don't think we have really had an

1 opportunity over what could have been a five-year, you know,
2 period of time to see what its full effect would be. But just
3 generally, I think it has -- it has worked the way it was
4 intended to the extent that it wasn't -- we didn't receive an
5 avalanche of cases. We don't see it utilized where it hasn't
6 been successful. It generally has been successful in all of the
7 cases that we have -- that we have referred it.

8 As far as possible changes, again, I would hope
9 that we would have a little more experience with it before we --
10 five cases really isn't enough for us to gain much experience.

11 SENATOR CEDILLO: True. Thank you.

12 CHAIRMAN PERATA: Anyone here who'd like to come
13 up in support?

14 MR. HENNING: Patrick Henning on behalf of the
15 California State Council of Laborers in strong support of both
16 of these candidates.

17 On a personal note, I've worked personally with
18 both of them: Lupe at the Labor Commissioner's Office, and
19 Cathryn in the Governor's Office. And both are the heart and
20 soul and reflect in a lot of ways the passion for both industry
21 as well as labor, that this is an important board for our state,
22 and it's an important industry in our state.

23 CHAIRMAN PERATA: Thank you.

24 Anyone else? Anybody in opposition?

25 Seeing none, do we have a motion to approve?

26 SENATOR PADILLA: Move.

27 CHAIRMAN PERATA: Motion by Senator Padilla.

28 I want to congratulate you for the work that you

1 do. I know it cannot be easy. Although, for a Democrat from
2 Bakersfield, you're used to things not being easy.

3 [Laughter.]

4 CHAIRMAN PERATA: And I also congratulate the
5 Governor for providing the continuity and the acknowledgement of
6 the work that you're doing. So, I wish you well in days ahead.

7 MR. ALMARAZ: Thank you.

8 MS. RIVERA-HERNANDEZ: Thank you.

9 CHAIRMAN PERATA: Call the roll.

10 SECRETARY WEBB: Cedillo.

11 SENATOR CEDILLO: Aye.

12 SECRETARY WEBB: Cedillo Aye. Dutton.

13 SENATOR DUTTON: Not voting.

14 SECRETARY WEBB: Padilla.

15 SENATOR PADILLA: Aye.

16 SECRETARY WEBB: Padilla Aye. Battin. Perata.

17 CHAIRMAN PERATA: Aye.

18 SECRETARY WEBB: Perata Aye. Three to zero.

19 CHAIRMAN PERATA: Three-zero, congratulations.

20 MS. RIVERA-HERNANDEZ: Thank you.

21 MR. ALMARAZ: Thank you.

22 CHAIRMAN PERATA: We will not be insulted if you
23 don't stay.

24 Our next appointee is David Maxwell-Jolly,
25 Director of the Department of Child Support Services.

26 Welcome.

27 MR. MAXWELL-JOLLY: Good afternoon, Mr. Chairman,
28 Senators. Good to see you today.

1 It's an honor to be here, to appear here today.

2 CHAIRMAN PERATA: Do you have any family here?

3 MR. MAXWELL-JOLLY: I do have my wife here,
4 Julie.

5 CHAIRMAN PERATA: Welcome. Don't give him a lot
6 of crap tonight.

7 MR. MAXWELL-JOLLY: Can I have that in writing?

8 [Laughter.]

9 CHAIRMAN PERATA: I'll give you a note.

10 MR. MAXWELL-JOLLY: Thank you.

11 I'm here for confirmation as Director of the
12 Department of Child Support Services.

13 I want to express my gratitude to the Governor
14 and to Secretary Belshe for giving me the opportunity to serve
15 in this capacity, and to guide the Child Support Program in the
16 future.

17 I'm particularly -- as we are in the final stages
18 of the federal approval for our automated statewide system that
19 we've been launching over the last few years, as you know,
20 certification of that system is our key program goal this year,
21 and we're well positioned to achieve that. It gives me great
22 personal satisfaction to be part of the team that's going to
23 make this a reality.

24 I'm also eager to take on the challenges that are
25 presented by the -- the unique mission that Child Support
26 pursues. That is, to improve the financial stability of
27 families in California. I want to make sure that children can
28 count on their parents as a source of financial support, but I

1 also want to try to help parents to continue to be involved in
2 the lives of their children.

3 My second goal as Director of the department will
4 be to make sure that the Child Support Program is put on a
5 sound, long-term financial footing. We -- investing in Child
6 Support yields financial support for families and helps their
7 stability, and financial and self-sufficiency, but it also
8 yields savings to the state in returning some of the costs that
9 we put out for the CalWORKS Program and for foster care. And
10 so, the future of the Child Support Program, I think, will
11 depend on how well we get the word out about the positive bottom
12 line of this program for both families and for the state.

13 Finally, I need to build in the Department of
14 Child Support Services the kind of institutional foundation
15 that'll be there for the future. We're a very young department,
16 and we're still having a lot to do to develop our infrastructure
17 and our capacity. We've benefitted a lot from the work done by
18 the Department -- by the Health and Human Services Agency in
19 their leadership development and training, and in their
20 succession planning efforts. And that's been a great help to
21 us, but we have more to do ourselves.

22 I'm honored to be here as a nominee for
23 confirmation for Director of the Department. I'm eager to
24 tackle the complexities of the Child Support Program, and I
25 promise that I will give the people of California my best.

26 Thank you, Mr. Chairman.

27 CHAIRMAN PERATA: Thank you.

28 I was looking at the rankings of collections.

1 I'm getting pretty accustomed to seeing California at the bottom
2 of every list. But since this is money left on the table, I
3 assume that when we don't collect from the person to pay child
4 support, we end up indirectly paying it somehow through the
5 state tax dollars.

6 I know you said you're a young agency. What
7 assurances or what comfort could you give us that this will be a
8 different number two years from now?

9 MR. MAXWELL-JOLLY: Well, I think if you look at
10 our history over the last five years, you can see a history of
11 steady improvement.

12 Our cost effectiveness number doesn't look too
13 good because we've been spending a lot on the one-time
14 investment in the Child Support system. So, we're
15 disadvantaged. Once that goes away in the long run, if that
16 weren't there, we'd be 40 -- we'd be about 50 percent higher
17 than we are right now.

18 We wouldn't be doing well compared to other
19 states, and I think that there's some fundamental -- well, let's
20 be clear. We will be doing much better over the next few years.
21 There's been a program of steady improvement. We've ranked
22 better every year in terms of our federal measures. Collections
23 have been -- have increased over the past five years, although
24 in recent years they've flagged.

25 We've been in the midst of a tremendous amount of
26 system conversion and training. That's an important effort to
27 go on, but I think it's redirected our resources away from the
28 bottom -- the fundamental job of collections. We will improve.

1 CHAIRMAN PERATA: When do you go on-line with
2 this?

3 MR. MAXWELL-JOLLY: The conversion system began
4 in '05, and we will be completely on-line in a single statewide
5 system by November of this year.

6 We believe that it takes some time for people to
7 get used to a new system and reach their full capacity, but I
8 think that the -- we will be looking to see increases in
9 collections and increased performance on our federal measures as
10 we go forward.

11 I think our federal measures have improved every
12 year. Our preliminary estimates for '07 is that we moved up a
13 rank of three for our current collection measure, and we moved a
14 little bit on our arrears measure.

15 I think that California's statewide system and
16 our continued focus on improvement, particularly concentrating
17 in the larger, low-performing counties, will yield results for
18 us. I talk regularly to all of the directors in the Child
19 Support Program, with the local directors. They are committed
20 to improving performance. They are really singularly focused on
21 it. Once we get beyond conversion and resources are directed
22 100 percent toward performance, we'll see results.

23 CHAIRMAN PERATA: If we can overtake Alabama,
24 that'll make us all happy.

25 MR. MAXWELL-JOLLY: We actually did have a
26 meeting with some other states. One of their biggest concerns
27 is that we are going to overtake them, and we're going to take a
28 bigger share of the federal incentives that are available. So,

1 they expect a single statewide system will be a great advantage
2 for us.

3 CHAIRMAN PERATA: Just for some job counseling,
4 the Governor likes to compare California to Arkansas a lot.
5 We've got a long way to go to get to Arkansas.

6 Any other questions?

7 SENATOR DUTTON: I'm just vaguely familiar with
8 some of this. It used to be that the collection of delinquent
9 child support, and so forth, was done at the county level. And
10 then, a few years back, it was before my time coming up here,
11 but it was changed.

12 I'm just curious, has anybody taken a look?
13 Obviously, we're not doing really well now. Are we actually
14 doing worse than we were doing back when it was handled at the
15 county level, through the county district attorney's
16 office?

17 MR. MAXWELL-JOLLY: If you look at the -- in
18 2000, we established a statewide program, and we at the local
19 level established separate child support -- local child support
20 agencies, independent from the local DA's office.

21 If you look at our collections records since
22 2000, I think we've gone up in excess of 20 percent. I don't
23 have the number. The last five years, we've gone up 20 percent.
24 That is, in fact, higher than what we were collecting back at
25 the time when it was under the district attorneys.

26 More importantly, with respect to the federal
27 measures, which really are a measure of how balanced your
28 program is, we've shown vast improvement in those federal

1 measures throughout the state. And they concentrate on how
2 effective you are in getting the child support that's ordered,
3 rather than just looking at the total collections. We're doing
4 much better than we were at the time that the program was under
5 local control of the DAS.

6 SENATOR DUTTON: Thank you.

7 CHAIRMAN PERATA: Anyone here to speak in support?

8 MR. OPPENHEIM: Thank you, Chair and Members.

9 My name is Dave Oppenheim. I'm the Executive Director for the
10 Child Support Directors Association. Our professional
11 association represents the 47 county and 5 regional local child
12 support agencies. Local child support agencies employ about
13 8,000 local child support professionals.

14 It is my pleasure to express CSDA's strong
15 support for the nomination of Dr. Maxwell-Jolly to the position
16 of Director for the State Department of Child Support Services.

17 Dr. Maxwell-Jolly possesses excellent
18 programmatic knowledge, has been a leader in California's effort
19 to install our new child support system, and I think most
20 importantly, has demonstrated his commitment to work
21 collaboratively with the Child Support Directors Association to
22 identify very specific strategies to increase child support
23 collections and to increase overall program performance.

24 In his short term as Director, Dr. Maxwell-Jolly
25 has improved communication with the local child support
26 agencies, has articulated a very positive vision for the
27 program, and has taken the time to get out and visit many of the
28 local child support agencies throughout the state and to meet

1 with the folks who really work with the program on the ground.

2 Additionally, Mr. Maxwell-Jolly has a long and
3 distinguished record of state service and leadership, and I'm
4 very confident that California's children and families that
5 depend on our services will be well served by his confirmation.

6 Thank you.

7 CHAIRMAN PERATA: Thank you.

8 Anyone else?

9 SENATOR BATTIN: Move.

10 CHAIRMAN PERATA: We have a motion to approve.
11 Call the roll, please.

12 SECRETARY WEBB: Dutton.

13 SENATOR DUTTON: Aye.

14 SECRETARY WEBB: Dutton Aye. Padilla.

15 SENATOR PADILLA: Aye.

16 SECRETARY WEBB: Padilla Aye. Battin.

17 SENATOR BATTIN: Aye.

18 SECRETARY WEBB: Battin Aye. Perata.

19 CHAIRMAN PERATA: Aye.

20 SECRETARY WEBB: Perata Aye. Four to zero.

21 CHAIRMAN PERATA: Four-zero. We'll leave the
22 roll open. Senator Cedillo is in Health Committee.

23 Congratulations.

24 MR. MAXWELL-JOLLY: Thank you very much.

25 [Thereafter, SENATOR CEDILLO
26 voted Aye, making the final
27 vote 5-0 for confirmation.]

28 CHAIRMAN PERATA: Our final appointee is John

1 Duncan, the Director the Department of Industrial Relations.

2 MR. DUNCAN: Good afternoon, Senator, other
3 Members of the Committee.

4 I would like to the introduce my family.

5 CHAIRMAN PERATA: Smart man.

6 MR. DUNCAN: My wife Cynthia. My daughter
7 Elizabeth. In the middle, son Johnny. He's been inflicted with
8 my name. And the youngest, very quiet I might add, Lauren
9 Duncan. She's four years old.

10 CHAIRMAN PERATA: Very cute.

11 MR. DUNCAN: Thank you. I think that's my best
12 presentation.

13 CHAIRMAN PERATA: You probably want to stop right
14 now.

15 [Laughter.]

16 CHAIRMAN PERATA: Go ahead, John.

17 MR. DUNCAN: It is a great honor to have the
18 opportunity to appear before you today and really to have the
19 opportunity to serve again as Director of the Department of
20 Industrial Relations, DIR. My previous experiences in state
21 government and at the Public Employment Relations Board
22 hopefully have allowed me to hit the ground running.

23 The turn-of-the-century name of our department
24 isn't exactly revealing, but it really -- it's important to keep
25 in mind that what our agency does has an impact on every worker
26 and employer in California, and I take that responsibility
27 seriously.

28 Some of our recent accomplishments and

1 initiatives offer a better understanding of our department's
2 mission to protect and promote workers and to ensure a level
3 playing field for employers, and I'll just touch on them
4 quickly.

5 Through the Division of Labor Standards
6 Enforcement, the state's Labor Commissioner office, we are
7 working to ensure that workers are paid properly and are covered
8 by workers' compensation.

9 We are a partner in the Economic Employment
10 Enforcement Will Coalition, targeting low-wage industries for
11 compliance with state labor laws, and to root out the
12 underground economy, an important priority.

13 Cal OSHA is leading the nation in protecting
14 workers against the danger of heat illness. The number of
15 heat-related deaths dropped 88 percent over the past two years.
16 We've also received national honors for a statewide effort to
17 reduce construction injuries.

18 An initiative very exciting to me personally, and
19 I know important to Committee Members here, is our -- the effort
20 to recruit 200,000 new apprentices in the building trades for
21 the needed infrastructure work as well as to deal with the
22 retirements in the trades, and to show respect for this
23 important type of work.

24 And in the Division of Workers' Comp, we are
25 continuing to work with employers and employees to monitor the
26 impacts of the workers' comp reforms. While the changes have
27 improved -- definitely improved California's business climate
28 and resulted in higher return-to-work rates for injured workers,

1 we are also analyzing changes to the permanent disability rating
2 schedule, and we hope to wrap that schedule up -- that proposal
3 up very shortly.

4 In each of our divisions, we take the two-pronged
5 approach to meet the department's mission. Our investigators
6 are not hesitant to issue citations when workers are being
7 exploited on the job or forced to work in dangerous conditions.
8 Concurrently, we conduct outreach to educate employers and
9 workers about labor laws. Members of our staff regularly appear
10 on radio and various other media, in multiple languages, to
11 explain everything from minimum wage to other employee rights,
12 and work place safety requirements.

13 At my direction, we've redesigned our web sites
14 to be more user friendly, and we've also created a worker
15 information telephone hotline. At all times our goal is to be
16 open and transparent, and I like to, after my time in private
17 business, to begin each staff meeting with being customer
18 friendly, because our customers are employers and all employees
19 in California, and that's who we really serve.

20 It's a talented team I have at DIR with many
21 dedicated public servants as well as some excellent appointees,
22 and I'm honored to be considered again to be part of this team
23 here today.

24 Thank you.

25 CHAIRMAN PERATA: Thank you.

26 I was looking at the flow chart of your
27 organization. How I spend my happy free time.

28 MR. DUNCAN: My sympathy.

1 CHAIRMAN PERATA: I noticed that you were at the
2 top, and underneath is Carrie Nevins?

3 MR. DUNCAN: Yes.

4 CHAIRMAN PERATA: This has been a big issue for
5 me, it's been a big issue for my caucus: permanent disability.
6 I'm going to read you a quote. I've had two bills vetoed by the
7 Governor in just this one area. He vetoed SB 815 in October of
8 2006 with the veto message that was, quote:

9 "When the new permanent
10 disability rating schedule took
11 effect in 2005, I
12 [Governor Schwarzenegger]
13 committed that we would monitor
14 the impact of the new law on
15 injured workers for 18 months,
16 and if we found that seriously
17 injured workers were falling
18 through the cracks, we would fix
19 it. That review will be
20 completed by the end of this
21 year,"

22 meaning 2006,

23 "and I am committed to making
24 any changes necessary to ensure
25 that injured workers unfairly
26 impacted by workers' compensation
27 reform receive appropriate
28 medical treatment and indemnity

1 benefits."

2 End quote.

3 According to the Chamber of Commerce, U.S.
4 Chamber of Commerce, which I believe this is the first time I've
5 ever quoted it publicly,

6 "California's permanent
7 disability benefits are the
8 fourth lowest in the nation.
9 The weekly benefit for the vast
10 majority of injured workers is
11 \$230."

12 So, the studies have come back. Everything that
13 we were required to comply with we have. There hasn't been any
14 action, so I'm getting a little impatient.

15 For awhile, you feel like you're being a team
16 player, and then after awhile, you feel like you're a chump.
17 I'm caught between one and the other now, heading toward
18 Chumpdom.

19 So, let me ask you some questions. How would you
20 assess our system right now in the quality of the fairness to
21 the workers?

22 MR. DUNCAN: I think it's important that -- that
23 the system be balanced. We've seen -- we've seen clear
24 improvements in the system, including towards injured workers,
25 with improvements in the return-to-work area.

26 I think it's very appropriate to have a look at
27 the permanent disability schedule as well as a broader --
28 broader potential changes.

1 It's very important in that particular area that
2 you've referred to, Senator, to make it -- to make sure that
3 this is scientifically based. It's not easy enough to adjust
4 certain numbers or percentages. In fact, some of that has been
5 part of the problem that was there in the first place, because
6 before the -- under the previous schedule, California's workers'
7 compensation disability benefits were at 285 percent of the
8 national average. And arguably, it was not -- it was uneven.

9 CHAIRMAN PERATA: I don't know what Arkansas is,
10 but I think they're --

11 MR. DUNCAN: Right.

12 SENATOR CEDILLO: Just on that point, the 285
13 percent of the national average sounds very impressive. I have
14 no idea what that means.

15 The average is the median. If that means the
16 25th state out of 50, then 285 percent of that, were we the
17 highest state? Were we the second highest state? The third
18 highest state?

19 You said we're the fifth state now, the fifth
20 lowest state.

21 CHAIRMAN PERATA: Fourth lowest.

22 MR. DUNCAN: Yes. Some of this --

23 SENATOR CEDILLO: Fourth lowest.

24 What state in that ranking, 1 to 50, were we in
25 providing benefits to workers?

26 MR. DUNCAN: It's hard to give an exact answer to
27 that question, unfortunately. But what I --

28 SENATOR CEDILLO: Well, it's hard to get any

1 meaning, then, from 285 percent of the 25th state. That could
2 be the 24th state, or it could be the first state. There's no
3 ability to measure that as a calculation to compare it to being
4 the fourth worst state in providing benefits for injured
5 workers, even though we're the eighth largest economy in the
6 world.

7 So, I just want to get some contextual framework
8 so that we can appreciate what confronts us.

9 MR. DUNCAN: A permanent disability itself is
10 only one part of it, part of the entire system. We have also
11 have temporary disability payments as well.

12 And within the issues before our department, what
13 we could do administratively, prospectively, or that the
14 administrative director can do -- what I think, to get to your
15 answer, the study has -- there's been perceived to be some
16 promises and action and delay. And we've spent a lot of time --
17 predating me -- looking at this, and we're comparing data from
18 differing schedules as well.

19 But at this point, we're now where I believe we
20 can make some final recommendations in the not too distant
21 future.

22 CHAIRMAN PERATA: Where are we? You sort of
23 preempted what I was going to ask.

24 Where are we right now? All the studies have
25 been done. On this floor, upstairs, we've done everything that
26 we said had to be done.

27 And I'm not taking this personally yet, but we
28 have taken two votes, passed both times. Got vetoed.

1 By my reading, we have complied with everything.

2 We have empirical evidence on three separate
3 studies, including one done by the UC researcher, that the
4 benefits have been slashed over half. So, all that's been
5 done.

6 Now, you have in the department the Division of
7 Workers' Comp. They work underneath you. What is the status?
8 Today, tomorrow, 200 years from now? What is it?

9 MR. DUNCAN: The status is, we have basically
10 completed the study, and we are developing the final
11 recommendations. And we'll have a report very, very shortly.
12 And I mean very shortly.

13 CHAIRMAN PERATA: Do you know when the last study
14 was completed?

15 MR. DUNCAN: In some cases, it's an ongoing study
16 because we literally now have 75,000 data points per year, but
17 we are -- we are done from the departmental standpoint.

18 CHAIRMAN PERATA: Let me just say, and I think
19 there's a lot of union people who are going to come up here and
20 praise you in a minute, and I don't want to get sideways with
21 you, because obviously there must be some good things going on.

22 But from my point of view, it's very hard for me
23 to tell an injured worker, "You don't understand how many data
24 points there are to consider." You know, if a guy's armed, I'm
25 in danger.

26 So, I have to have more precision. I don't get
27 these opportunities very often, so bear with me.

28 MR. DUNCAN: Sure.

1 CHAIRMAN PERATA: You're in a position where not
2 only the status, when it's going to happen, what is left to be
3 done and to determine before the regulations, or the
4 suggestions, or whatever it is, and what are the next steps to a
5 point where I can tell my constituents, "You know what? We now
6 have arrived at a solution, and beginning this day, the payment
7 schedule will be as follows."

8 That's what I want, and that's what I'd like to
9 have you find out for me. Because I have been -- if I were
10 playing in the majors right now, I'm "0" for everything; I'd be
11 back in the minors. Barry Zito, yeah.

12 [Laughter.]

13 MR. DUNCAN: We can do a little better these
14 days.

15 CHAIRMAN PERATA: So, what I really need to do
16 is, I need from you answers to those questions because I can't
17 -- I've been getting kind of hosed. I have a little time left,
18 and I want to make sure that things that I started with when I
19 was a young child get done before I die.

20 You've got the point?

21 MR. DUNCAN: I got the point.

22 CHAIRMAN PERATA: I'm usually too subtle.

23 [Laughter.]

24 MR. DUNCAN: I got the point.

25 I guess all I can say is, I got the point. We
26 are literally crossing the eyes, dotting the tees [sic].

27 CHAIRMAN PERATA: You don't want to say any more
28 just in case --

1 MR. DUNCAN: I can't live up to what I'm telling
2 you.

3 CHAIRMAN PERATA: Suffice it to say --

4 MR. DUNCAN: Right.

5 CHAIRMAN PERATA: -- you're going to find out
6 exactly, and you're going to let me know.

7 MR. DUNCAN: Yes.

8 CHAIRMAN PERATA: I have a question about those
9 200,000 jobs created by the infrastructure, the bonds.

10 MR. DUNCAN: Sure.

11 CHAIRMAN PERATA: What's the relationship, what
12 is your role, your department's role in that?

13 MR. DUNCAN: The department, the Division of
14 Apprenticeship, which monitors the Apprenticeship Program, is a
15 division within our department.

16 Personally, I also served in the past on the
17 State's Employment Training Panel with workforce development
18 issues, as well as basically respect for the role of apprentices
19 is -- is something close and personal to me. I mean, this
20 earn-while-you-learn concept, two-thirds of people don't
21 graduate -- don't really go on to college, and yet we have -- we
22 have this need out there. We have both succession needs and
23 also the infrastructure needs.

24 So, part of this literally campaign, which we've
25 been partnering up and down the state with building trades, and
26 going to facilities, is to draw attention to really the high
27 quality of work that apprentices do, and a viable, high-paying
28 career that you could have in this field.

1 And we've been -- iron workers facilities near
2 Fresno, laborers facility down -- carpenters training. We
3 kicked it off. It's very positive.

4 And we have videos that are running, public
5 service announcements, that just go, "I-built-it-dot-org," goes
6 to our web site, and it channels in information about
7 apprenticeship if you go there, and the programs in your area.
8 We're getting a lot of interest from people due to our
9 partnership with the trades and others to pursue careers in
10 this.

11 So, it's really a -- and it fits into the whole
12 career tech and influence of vocational rehab.

13 CHAIRMAN PERATA: Is that general funded?

14 MR. DUNCAN: No, actually we're sort of lucky it
15 isn't.

16 CHAIRMAN PERATA: Any questions from Members?

17 SENATOR DUTTON: In your response to the
18 questionnaire, you mentioned that you're working with the State
19 Compensation Insurance Fund to promote some positive changes.

20 Could you elaborate on what those positive
21 changes are?

22 MR. DUNCAN: Yes. I'm glad you emphasized
23 positive.

24 The Director by statute is an ex-officio member
25 of the State Compensation Fund Board. And when I took over this
26 position, I was appointed in August, and obviously the Fund has
27 been going through a turbulent time. But this Board itself is
28 very passionate about doing the right thing and opening -- being

1 transparent. They -- I lend an expertise both from a workers'
2 comp standpoint and also as a state agency that -- that has
3 issues with them.

4 But we're supportive of the thrust of the
5 legislative changes and discussions. I think an expanded board
6 makes some sense, because, you know, it's a small board.

7 Janet Frank is just a spectacular president,
8 comes from the outside. She's very dynamic. I think she needs
9 a management team, and that aspect of exempt appointees is
10 relevant.

11 Then there's some other changes as well that are
12 positive, but I work well with them. In fact, a board meeting's
13 going on as we speak right now, and I'll be there tomorrow
14 morning should you allow me to be there.

15 SENATOR DUTTON: One of the other things that was
16 brought to my attention is that the State Compensation Insurance
17 Fund paid nearly \$20 million in late penalties in 2007 for
18 repeatedly delaying, denying care and compensation to injured
19 workers.

20 Could you give me some comment about that
21 situation? Their timeliness, has that been improved? Is it
22 going to be improved?

23 MR. DUNCAN: It's -- it definitely will improve
24 and has to improve. That's one of these -- that's one of the
25 very specific issues that Janet has committed to addressing at
26 the board level.

27 State Fund has a very important role. In
28 addition to being -- it's an insurer of last resort, as well as

1 a very important dynamic in the -- in the whole workers' comp,
2 providing much needed insurance to employers in California. So,
3 it needs to be run well.

4 SENATOR DUTTON: Well, even more important than
5 that, I think most of us are also concerned that workers that
6 become injured, that they get what's promised to them.

7 MR. DUNCAN: That is -- that really is the most
8 important priority.

9 SENATOR DUTTON: And they shouldn't be delayed.
10 It's bad enough when they get injured on the job, but it doesn't
11 help any of us when they're delayed to what they're entitled to.

12 MR. DUNCAN: Yes, that's for sure.

13 SENATOR DUTTON: Thank you.

14 CHAIRMAN PERATA: I have one more question.
15 Is the Division of Apprenticeship Standards
16 working with the Department of Corrections, or whatever they
17 call it now, Corrections and Rehab?

18 MR. DUNCAN: Yes.

19 CHAIRMAN PERATA: Are you working with them and
20 with parolees?

21 MR. DUNCAN: Yes, we are. We are working -- we
22 have some apprenticeship programs. We also have -- while we
23 don't monitor, we help set up pre-apprenticeship programs, and
24 that's a very important aspect.

25 CHAIRMAN PERATA: How does that work
26 mechanically? Do you go to the prison and find somebody?

27 MR. DUNCAN: Yeah, we have -- there are --

28 CHAIRMAN PERATA: You go to the Internet.

1 MR. DUNCAN: No. I don't know, in some cases
2 maybe.

3 We work with the Corrections and we work with
4 appropriate programs. There's an inmate -- I can't recall the
5 name directly, but there is an apprenticeship --

6 CHAIRMAN PERATA: So, CDCR -- we always change
7 the name when we can't do the work -- so, they give you
8 somebody, and then what do you do with that person?

9 MR. DUNCAN: You train in a specific skill.
10 There's the carpenters, there's other skills. And then when
11 they leave, there's an employer.

12 CHAIRMAN PERATA: That's how Danny got it.

13 [Laughter.]

14 CHAIRMAN PERATA: I'm interested. They give you
15 the name, and then how do you connect with that person?

16 MR. DUNCAN: Actually, if you -- there are
17 apprentice programs at prisons, including one at Santa Clara.
18 And just like any apprentice, you can register for those
19 programs to participate in it.

20 One unique thing that's actually occurring in
21 Oakland right now is a special funding for a pre-apprenticeship
22 program through Allen Temple. And that type of program is very
23 good.

24 CHAIRMAN PERATA: That's under your flag?

25 MR. DUNCAN: Yeah. We're working on that one.

26 CHAIRMAN PERATA: All right.

27 Anybody here that wants to come up and chat on
28 the positive side of the ledger?

1 MS. WEI: Thank you, Mr. Chair and Members.

2 Angie Wei on behalf of the California Labor
3 Federation, pleased to be here in support of Mr. Duncan's
4 confirmation to be the head of DIR.

5 Our organization has some history with
6 Mr. Duncan, both from his first stint as the Director of DIR and
7 his time at PERB, and we appreciate the significant years of
8 public service he's dedicated his career to.

9 We may not always -- we may not have always
10 agreed with Mr. Duncan and the work that he did under the Wilson
11 administration at DIR, but we did find --

12 CHAIRMAN PERATA: That's known as a disclaimer.

13 [Laughter.]

14 MS. WEI: We did find that he is a straight
15 shooter. He will tell it to us like it is, and we may just have
16 to agree to disagree. Hopefully, we'll be able to minimize that
17 this time around.

18 We found that Mr. Duncan both respects and honors
19 labor as an institution and the positions and policies that we
20 promote and protect.

21 We also want to register our shared concern and
22 frustration with the Chair about the lack of a change to the
23 permanent disability rating schedule, and we are listening to
24 Mr. Duncan's -- some pledges that change is coming around the
25 corner, and that you -- I have hope that Mr. Duncan will keep us
26 all from Chumpdom.

27 Thank you very much.

28 CHAIRMAN PERATA: You know, if you turn around,

1 the last time I saw all these guys together was at a bar.

2 FROM THE AUDIENCE: At Chops.

3 [Laughter.]

4 CHAIRMAN PERATA: Chops at noontime. So, the
5 Happy Hour starts in an hour-and-a-half, so be brief.

6 [Laughter.]

7 MR. HENNING: Chops is a very good employer in
8 this state.

9 Patrick Henning on behalf of the California State
10 Council of Laborers.

11 We have had the pleasure of working with
12 Mr. Duncan in his various capacities over the years. In fact,
13 I'm the third generation Department of Industrial Relations. He
14 happens to fall somewhere in between my father, who is the
15 Labor Commissioner, and myself, who is over as Deputy Director,
16 and he's always been there for us both in the public sector as
17 well as private.

18 MS. BROYLES: Good afternoon, Mr. Chairman,
19 Senators.

20 Julianne Broyles, here on behalf of the
21 California Association of Joint Powers Authorities, also in
22 strong support of Mr. Duncan's confirmation.

23 Over the years, I have had the pleasure in a
24 variety of different positions of working with Mr. Duncan. I
25 think the terms you're going to hear over and over again from
26 people speaking in support is straight shooter, honest, will
27 tell you the truth whether or not it's pleasant or not to hear,
28 does his best make sure that both employers and employees have

1 their issues fairly heard and addressed if it's within power of
2 his agency to deal with.

3 And I believe that you couldn't find a better
4 person to head up DIR, and would ask for your support.

5 CHAIRMAN PERATA: Thank you.

6 MR. DIAZ: Mr. Chair and Members, Cesar Diaz on
7 behalf of the State Building and Construction Trades Council.

8 I want to echo the sentiments that were expressed
9 by my previous colleagues. We, too, are very much in support of
10 Mr. Duncan's confirmation.

11 We believe he has vast experience in bringing
12 something good to the table here. There's a lot of good work to
13 be made ahead of us, and we trust that his open-door policy will
14 continue, and we'll work together on these very difficult
15 challenges ahead for the State of California and its workers.

16 In support, thank you.

17 MR. WETCH: Mr. Chairman and Members, Scott Wetch
18 on behalf of the California State Pipe Trades Council, and the
19 State Association of Electrical Workers, and the Western States
20 Council of Sheetmetal Workers, and the Elevator Constructors
21 Union, in support of the Director's confirmation.

22 It's been very seldom that we've actually needed
23 to go to the Director's office on any given issue, but what we
24 have experienced during his tenure is that in the divisions
25 beneath him, there's been fostered an approach that includes
26 management and labor, and all the affected parties in an open
27 process, which we greatly appreciate.

28 Since the Chair raised the issue of

1 apprenticeship, there is one issue that I hope the Director will
2 take on, and that is the fact that we still have apprenticeship
3 programs in the state, both nonunion and union, that have
4 absolutely dismal graduation rates. They're getting subsidized
5 with state monies to do training, and yet they're -- they're not
6 graduating people. And if they were school districts, they
7 would be under trusteeship.

8 And it's time that union and nonunion programs
9 have to pony up and demonstrate that they're actually graduating
10 people. It's something that we hope the Director will take on.

11 Thank you.

12 MR. CREMINS: Tim Cremins, Operating Engineers.

13 It's, I'd say, an honor to support John. I've
14 known him for several years in several different capacities.
15 And he's dealt with some very contentious issues with us, and I
16 think at the end of the day, he's left both sides feeling that
17 he's listened to their input and done a remarkable job,
18 actually.

19 Thank you.

20 MR. CURTIN: Mr. Chairman and Members, Danny
21 Curtin, California Conference of Carpenters.

22 I am really pleased to be here in support of
23 John. I know him for a long time. We've had numerous
24 conversations over more than a decade. It's astonishing how
25 we've found areas of common interest in these difficult disputes
26 that we talk about between labor and management constantly.

27 I'd like to make a few observations just for --
28 in a brief moment. The first thing I want to say is, I agree

1 100 percent with the thrust of your concerns. I've mentioned
2 them many times at every opportunity I get. Talked to John
3 about them.

4 Second, I'd like to say that I'm not sure about
5 your batting average. I think you're probably off a little bit
6 there, but I do know that you're still at bat, and you'll have a
7 chance to improve that batting average, if I'm not mistaken. On
8 this issue, I couldn't agree with you more.

9 But from my perspective, the Department of
10 Industrial Relations, the labor agency, John is a refreshing
11 change for the better. And I dare say this from my point of
12 view, which is more of a worm's eye point of view.

13 There was a phrase years ago: Our long national
14 nightmare is over. I think it was the Watergate fiasco.

15 That's how I feel in terms of the Department of
16 Industrial Relations. There was a -- and I won't name names,
17 but it won't hard to look them up. There was a director for
18 almost three years, maybe more, who was an acting director who
19 never came before you for confirmation.

20 There was a labor commissioner who never came
21 before you for confirmation.

22 I can't blame you for wanting to get your point
23 of view across, because it's been a long time before -- since
24 anybody's been brought before you for this kind of conversation.

25 From my point of view, John Duncan is exactly the
26 kind of person you want in this administration for the
27 conversation that you raised. He's knowledgeable. He's been
28 through this process many times. I don't mean the confirmation

1 process, God forbid, but the issues he's knowledgeable about.
2 He will bring a voice into the administration of knowledge and
3 reason on this issue. God knows where it all goes, as you well
4 know.

5 As Chairman of PERB, he has been, I think,
6 exquisite in handling public sector controversies. They're
7 never very simple, as we probably all know.

8 I really think it's important that he be in this
9 process of conversation about exactly the thing you've raised,
10 because you will have somebody to go to, to get a straight shot
11 on this, and I think it's very important.

12 I am extremely relieved to be up here and saying
13 we want to support John Duncan and look forward. Changes have
14 all ready been made in this department. Our people are all
15 ready feeling like they have a person they can go to with
16 problems to sort them out, after three years of not being able
17 to get any communication going of any substance.

18 So, I strongly urge your support. Thank you.

19 CHAIRMAN PERATA: If that doesn't kill you.

20 [Laughter.]

21 MS. SEABURY: Mr. Chairman, Senators, I'm Terry
22 Seabury, Executive Director of the Western Electrical
23 Contractors Association. We are a statewide merit shop or
24 nonunion electrical contractors association. One of our major
25 services is training electricians.

26 We enjoy the trust from the -- given to us by the
27 Department of Apprenticeship Standards of running a statewide
28 apprenticeship program and training program.

1 So, we would like to show our support for the
2 appointment and confirmation of John Duncan as Director of the
3 Department of Industrial Relations. Since his appointment, we
4 have seen major changes. The first and most important, I think,
5 is he's improved communication in the regulatory community.
6 Someone mentioned that he gets the employers' and the employees'
7 point of view. He also gets the union and the nonunion point of
8 view.

9 We don't always agree. You know, that's the name
10 of the game.

11 The other thing that we have noticed is that he
12 has encouraged and made some interaction and communication
13 between his division chiefs happen. I think this is very
14 important. I think there's a lot that they have in common, a
15 lot that they can help each other with.

16 And lastly, I think the backlog of opinions and
17 decisions that he has unsurfaced that laid there with prior
18 division chiefs or department chiefs, I think he's done an
19 incredible job at trying to get those things settled and out
20 into the community.

21 So, we encourage your support. Thank you.

22 CHAIRMAN PERATA: Thank you.

23 Merit shop, I've never heard that before. Gently
24 put.

25 Anyone else? Anybody in opposition?

26 I just want to help you out a little bit for my
27 Republican colleagues, to point out that you graduated from UC
28 Berkeley as a Republican.

1 MR. DUNCAN: Yes, I didn't advertise that.

2 CHAIRMAN PERATA: This is a brave man.

3 [Laughter.]

4 CHAIRMAN PERATA: Brave man.

5 Well, I don't want to take the bloom off all that
6 wonderful praise, but as I said, you're my last chance to get
7 something done here.

8 So, I'm going to hold you in Committee and ask
9 you to come back. You don't expire for awhile. You may go to
10 the meeting tomorrow.

11 MR. DUNCAN: Thank you.

12 CHAIRMAN PERATA: You're okay.

13 I'd like you to think about and call my office
14 and tell me, or call Nettie, and tell me how long you think it
15 will be before you can give me a report on the questions that I
16 asked. Then I'd like you to give it to us, and then I'm going
17 to bring you back and just have a discussion about that.

18 I hope that everybody who's in the food chain
19 understands that I don't intend to shoot the messenger. I have
20 in the past, but the message is always the same, so it doesn't
21 do me a whole lot of good.

22 But just because of all the things that have been
23 said about you, and your sensitivity to it, I hope -- and if you
24 come back and say, "I failed. I can't get an answer," that's
25 okay, too. That'll tell me a lot.

26 So, I don't want you to feel like you're in
27 harm's way, other than this is a big damn issue for me and for a
28 lot of my colleagues, even some of those people. Not all of

1 them, but the sober ones.

2 With that, if you would let us know about when,
3 and then come back when you're ready. And as soon as you're
4 ready, if you have any difficulty decoding what I'm asking for,
5 just call me.

6 MR. DUNCAN: I get your message loud and clear,
7 and you will hear from me.

8 CHAIRMAN PERATA: Mom and the kids, it's cool.

9 MRS. DUNCAN [FROM THE AUDIENCE]: Do we have to
10 come back, too?

11 [Laughter.]

12 MR. DUNCAN: They're my best advocates.

13 CHAIRMAN PERATA: He'd have been gone by now if
14 you weren't here.

15 [Laughter.]

16 CHAIRMAN PERATA: Thank you.

17 MR. DUNCAN: Thank you very much.

18 [Thereupon this portion of the
19 Senate Rules Committee hearing
20 was terminated at approximately
21 2:45 P.M.]

22 --ooOoo--

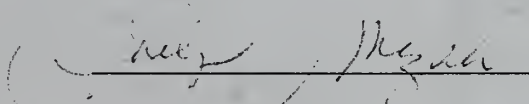
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of May, 2008.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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AGRICULTURAL LABOR RELATIONS BOARD

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Senate Rules Committee

April 23, 2008

APR 23 2008

Appointments

Honorable Don Perata
 Chairman, Senate Rules Committee
 California Legislature
 State Capitol, Room 420
 Sacramento, CA 95814

Dear Senator Perata,

It is with great honor that I submit the enclosed responses to the questions you posed in your correspondence of April 7, 2008 relating to my upcoming confirmation hearing to the Chair of the Agricultural Labor Relations Board. As a native of Kern County and as an individual who worked in agriculture during several summers as a teenager, I am acutely aware of the struggles encountered by farm workers. I have been a public servant the majority of my professional career and the opportunity to continue this service at the highest level of the Agency that serves to "guarantee justice for all agricultural workers and stability in labor relations" is truly a story I could never envision while working in the fields of Kern County approximately forty (40) years ago.

My responses have been prepared in the order of your questions and, as you have also requested, I include my most recent Form 700, Statement of Economic Interest.

1. **As chair of the Agricultural Labor Relations Board, what goals have you set for board during your term? How will you measure your progress in achieving these goals?**

An initial goal was to establish a seamless transition within the ALRB from the former chair's to my administration and this required that I immediately recognize the value of each board member, general counsel and staff of the ALRB. The first day of my appointment, I met with all staff located in the headquarters of the

April 23, 2008

ALRB (subsequently met with regional staff) and I discussed the importance that each individual brings to the organization and my interest in always providing a quality, timely product to those we serve; the agricultural workers, the labor organizations, and the agricultural employers of this state.

It is incumbent on the ALRB to issue timely and consistent decisions (facts applied to law) on matters before the Board in order to develop and/or maintain credibility as an organization. My short tenure with the Board confirms that consistency in the application of the Agricultural Labor Relations Act (ALRA) is not a new concept to the Board and my goal is to ensure the continuation and or improvement of processes that will eventually result in speedy resolution of conflicts within the collective bargaining process. This includes the issuance of timely, consistent decisions by hearing officers and the issuance of timely, consistent decisions by the Board on matters appealed to the Board. The re-appointment of two Board members (Shiroma and Rivera-Hernández) has had a positive impact on the Board's ability to develop the consistency sought in its decisions.

In addition, outreach by way of coordinated efforts with sister agencies can provide vehicles for dissemination of information to those that the ALRA was intended to serve. Recently, the Board met with the Director of the Employment Development Department (EDD) to discuss strategies that would result in mutual benefit to each organization, including informational settings with EDD/ALRB staff to ensure field personnel are aware of the respective organizations mission/objective in order that referrals are appropriately made. This model will also be pursued with other agencies such as the Department of Industrial Relations (DIR).

2. What do you see as major challenges facing the board?

Clearly, the lack of adequate resources (personnel) is an issue confronting the ALRB on a daily basis. The Board's staff (includes General Counsel's) has been impacted over the past several years by cutbacks and the 07/08 and 08/09 budget constraints do not allow for growth. The field offices are encountering more notices of intent to take access and in recent weeks, elections have been held on a weekly basis. The pre and post work necessary to conduct an election generally requires that field examiner resources from the two regional offices (and one sub-regional office) be dispatched to assist in conducting the election (resulting in other work, such as unfair labor practice investigations, being placed on hold until the election activity is completed). Large elections (300+) may require the

use of non-ALRB staff to assist in conducting elections (have used EDD, DIR and NLRB staff).

A study conducted by the ALRB in 2001 (as a result of Legislature's request to address Board's ability to meet statutory mandate to implement and enforce ALRA) concluded that "The ALRB lacks the necessary staffing to move quickly in conducting investigations and, at the end of the case, to pursue compliance with Board orders."

The Board, in 2000 had 52.5 funded positions. The 2007/08 ALRB budget funds 40.5 positions.

3. How have the shrinking budget and staff reductions over the past several years affected the board's ability to meet its workload demands in a timely manner?

What measures has the board taken or considered taking to more effectively and efficiently utilize staff and other resources?

The shrinking budgets and staff reductions over the past several years have most severely impacted our ability to investigate post-election issues and unfair labor practice charges (ULP). Whenever an election petition is received, regional office staff are often required to cease their current work to assist in the investigation of the election petition and then to assist in the conduct of the election. After the election has taken place, many election cases require post-election regional investigations concerning challenged ballot issues (eligibility to vote) and/or overlapping ULPs (conduct that is alleged as both an election objection and a ULP). However, when elections petitions are received in close proximity to each other, which happens often, regional office staff is often unable to complete work on an initial election when a second election petition must now be given priority (as elections must be held within seven (7) days). Thus, due to staffing issues, the investigation of post-election and ULPs of the initial election and any previously held elections must be held in abeyance until the second election is processed which, in itself, may raise its own post-election and ULPs issues. This pattern is repeated every time a new petition is filed and is accentuated whenever a large election is held. In recent weeks, the ALRB has conducted elections on four (4) consecutive weeks and more election petitions are anticipated. Also, given the nature of work in the processing of election petitions, staff is often required to work irregular hours, overtime and during weekends in order to prepare for a 7-day election. When multiple elections are held in such short periods of time they

present physical challenges to our investigative staff which, again, may affect their ability to timely process post-election issues and ULP cases.

To assist the Board in the conduct of large elections, we have coordinated with the Labor and Workforce Development Agency and or the National Labor Relations Board for use of staff from their respective agencies.

4. What is the board doing or planning to do to meet the challenge of filling expected vacancies with qualified staff?

Approximately 65 % of the Board's employees are of retirement age (50+). In order to meet the challenge of filling expected vacancies with qualified staff, the Board has participated in an internship program seeking both college and law students for summer internships. The interns are assigned to both our headquarters office and the regional offices and perform work in all phases of the board's operations. Law students are primarily assigned to our headquarters office (Sacramento) and perform legal research and writing on pending election and unfair labor practice cases and assist our legal staff in the litigation of court matters. College students are primarily employed in our regional offices (El Centro, Salinas and Visalia) and perform primarily support as well as assist Field Examiners in the pre and post election processes. In both cases, students are exposed to the work of the agency and are encouraged to participate in the examination process when tests are given for ALRB positions.

In addition, the Board recently discussed "job loaning" with the Director of the Employment Development Department. This process will expose staff from other departments to the work of the Board and could result in the development of a pool of well-qualified candidates when vacancies occur.

Further, as is the case with many other state agencies, the Board will rely on "retired annuitants" to assist in the training and development of new staff as well as to assist in the maintenance of current workloads.

Lastly, as Board Chair, I (and key staff) have participated in several Workforce Development seminars designed to provide information on tools available to government employers as we attempt to address staff retirements and backfilling of vacant positions.

April 23, 2008

5. In what ways, if any, have these changes affected the board's ability to enforce ALRA?

While I have not encountered any first hand experience with the board's ability to enforce the ALRA (due to short tenure on board), long-term staff have provided insight on this issue.

The increased use of farm labor contractors as suppliers of labor to California's farms has had a significant impact on the ALRB's ability to enforce the ALRA. The increased use of labor contractors brings with it increased difficulty in properly identifying the proper employer since labor contractors are not employers under the ALRA. Instead, the farmer who engages the labor contractor is considered the employer. Investigation of an election petition is made more difficult by the compressed statutory time frame, which requires that elections be held within seven days of the filing of a petition. Due to the mobility of the agricultural workforce and its high turnover rate, even a delay of a few days in the commencement of an investigation can mean the unavailability of witnesses until the next season (if at all). Moreover, many workers hired by labor contractors have no direct contact with their statutory employer. Consequently, they usually cannot assist the Board investigators in identifying the actual employer. Further, even when employees can identify their statutory employer, given the relatively short employment cycles, the complaining employees may be unable to state the names and whereabouts of their co-workers who may be potential witnesses in their favor. These same considerations may dissuade farm workers from filing unfair labor practice charges. Moreover, because farm workers supplied by labor contractors are more likely to be recent immigrants (legal or illegal), they are less likely to know of their rights under the ALRA.

Beginning in the early 1990s, the NLRB began to expand its jurisdiction by narrowing the definition of "agriculture" and, due to federal preemption principles, the ALRB must defer to the NLRB's interpretation. The NLRB excluded from the definition those who performed secondary agricultural work, such as field packing, where the employees are not employed by a "farmer," but instead by an outside entity, such as a custom harvester that contracts with the farmer to harvest the crop. However, because the actual severing of the crop is indisputably primary agriculture, the NLRB continues to consider that work outside its jurisdiction. As a result, many employees find themselves engaged in what is called "mixed-work," where some of their work each day is subject to ALRB jurisdiction and some is subject to the jurisdiction of the NLRB.

The ALRB has seen very few cases involving mixed work and, as the ALRB's experience is based on the filings it receives, employers and farm labor unions are in a better position to comment on the practical effects of the mixed work situation.

6. What actions does the board take to ensure the integrity of the union representation election process?

A primary responsibility of the Regional Directors is to ensure the integrity of the election process. The current Regional Directors are very seasoned individuals having worked for the Board for many years. The Regional Directors ensure that there is sufficient staff to conduct the pre and post election activity, assign the more experienced staff the critical functions during the election and schedule pre-elections conferences with appropriate parties (union, employer and counsels) to resolve issues such as identify voter eligibility, establish election time(s) and location(s).

On election day, the polling place is quarantined with only the election staff (includes observers) and eligible voters allowed in the area. Campaign material is not permitted near the voting location and Board staff ensures that the polling place is free of all campaigning and campaign material prior to the voting taking place. Once the election has occurred, the ballot box is sealed and secured for counting (votes counted twice to ensure accurate accounting of votes).

7. To what extent does the board rely on other entities to staff an ALRA election? How does the board ensure that outside staff is qualified to assist in ALRA elections?

In recent years, the Board has relied on outside staff to assist in conducting large elections. The Board has a Memorandum of Understanding with the NLRB wherein experienced NLRB staff will be provided to the ALRB to assist during elections. In fiscal year 06/07, the Board reimbursed the NLRB approximately \$6,000.00 for use of their agents during elections.

Through the Labor and Workforce Development Agency, the ALRB has also relied on sister agencies such as EDD and DIR to provide experienced investigators to assist in large elections. While I was employed as the Deputy Chief of the Division of Labor Standards Enforcement (DLSE), I had the opportunity to direct DLSE staff to assist in ALRB elections and the initial criterion for this assignment

was previous experience with the ALRB (DLSE employed several former ALRB staff).

Prior to an election taking place, non-ALRB staff is provided orientation and training on the activities they will perform. The ALRB has developed a sound working relationship with the other agencies and it is not uncommon that EDD and DIR will send the same individuals who have previously assisted in elections so that less time is needed for training of non-ALRB staff.

During the election, the ALRB staff perform the most sensitive and critical functions of the election (determine eligibility, handling challenged ballots, etc.) while the non ALRB staff perform the more routine activities such as assist in setting up voting sites, ensuring that campaigning is not occurring near the voting site, controlling the voting line, etc.

8. Have you reviewed this study and, if so, what conclusions have you drawn from it?

While I was unable to locate a "study" completed by board's staff on card check system, I have reviewed several writings on the subject, the proposed bill (SB 180) to amend the Agricultural Labor Relations Act (Labor Code § 1140, et seq.) as well as an analysis on the proposed legislation.

There is no doubt a "card check" system is designed to expedite the process of certifying a bargaining representative. The Board would certify a representative based solely on the determinations that the union submitted the required number of cards and that the petition was filed when the employer was at 50% or more of peak employment. The current process provides that the union must submit "authorization cards" from the majority of employees in the bargaining unit to demonstrate a "showing of interest", a prerequisite to the scheduling of an election.

It is not clear that the elimination of the "showing of interest" process will result in more expeditious collective bargaining nor would it eliminate the burdens on the ALRB in its attempt to resolve labor disputes. As noted in the analysis of SB 180, "The primary impact to the ALRB could be one of shifting focus and resources from the conduct of secret ballot elections and related objections to the evaluation of the validity of the representation cards and related unfair labor practice charges (ULPs).

Honorable Don Perata

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April 23, 2008

I sincerely appreciate the opportunity to respond to your inquiries and respectfully request your support as I proceed through the confirmation process. If you should have additional inquiries or concerns, I can be contacted at (916) 651-7621.

Sincerely,



Mr. Guadalupe G. Almaraz
Chair, Agricultural Labor Relations Board

AGRICULTURAL LABOR RELATIONS BOARD

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April 22, 2008

Senator: Rules Committee

APR 22 2008

APPROPRIATE

Honorable Don Perata
Chairman, Senate Rules Committee
California Legislature
State Capitol, Room 420
Sacramento, CA 95814

Dear Senator Perata,

Thank you for your consideration of my reappointment to the Agricultural Labor Relations Board. It has been an honor to serve on the Board the past five years and I appreciate the opportunity to share my thoughts with you based upon my experience. At your request, I have also attached an updated Form 700, Statement of Economic Interest.

As you know, the Agricultural Labor Relations Board (ALRB or Board) has a threefold mission to conduct secret ballot elections, to prevent and remedy unfair labor practices and to administer the mandatory mediation program. The ALRB consists of two independent appointed authorities, the five-member Board and the General Counsel. The Board adjudicates election and unfair labor practice (ULP) cases and the General Counsel is responsible for the investigations and prosecution of ULP charges. The General Counsel is also responsible for supervising the three regional offices.

1. **What do you consider the most significant accomplishments of your previous term on the ALRB? What do you hope to accomplish during your current term of office? How will you measure your success?**

Issuing Fair and Balanced Decisions: My primary responsibility as a Board Member is to deliberate and rule on cases that come before the Board. My most significant accomplishment, and primary goal in the next term, is creating a body of law that complies with the purpose of the Agricultural Labor Relations Act (ALRA), namely, to guarantee justice for all agricultural workers and bring stability to agricultural labor relations in California. I believe the decisions I've issued bring a needed sense of certainty to the area of agricultural law and reflect a fair and balanced approach to case adjudication. During my term, the majority of the Board's decisions were not appealed to the Court of Appeal and, in those cases that were, the Court of Appeal either affirmed the Board's decision or denied review.

Implementation of the Mandatory Mediation and Conciliation (MMC) Law: Immediately upon being appointed to the Board in 2002, we drafted the regulations to implement MMC which provides for binding mediation, under certain circumstances, where the parties have been unable to reach a collective bargaining agreement. The Board convened its Ad Hoc Advisory Committee and held a public hearing. We were also successful in defending a challenge to the law as unconstitutional. Since its implementation, five cases have been sent to mediation, resulting in three contracts voluntarily reached during the mediation process and one contract imposed by the mediator and the ALRB.

Improved Compliance and Implementation of the Agricultural Employee Relief Fund (AERF): Monies are deposited in the AERF when monetary relief is ordered but we are unable to locate the employees and allows the funds that are deposited to be used to pay employees in cases where collection of the full amount was not possible. The Board used a newly established protocol to close appropriate cases and reduce the compliance caseload. The closing of these cases made 238 employees eligible for pay outs totaling \$249,864. Thus far, \$219,967 of this amount has been disbursed to 179 workers.

In addition, the transitory nature of farm workers creates serious obstacles to locating them when monies are available. I worked with my staff counsel to assess the regional offices current tracking methods and the Board established procedures that include regular tracking letters and standardized verification of contact information. I will continue to work on improving tracking methods at the front end to increase the ALRB's ability to distribute monies owing to workers.

Expanded Outreach: The Board produced new brochures explaining parties rights under the Act and drafted a "novella" (Spanish-language story in a comic format) informing workers of their rights and responsibilities under the ALRA. Following the heat-related deaths of farm workers last Summer, the Board also produced a public service announcement warning of the risks and informing workers of their right to engage in concerted activity to improve working conditions. I will continue to work with the Board to expand outreach through coordination with other state agencies and identifying opportunities for mass media use.

Meeting the ALRA Mandate in the Face of Minimal Resources: As I will discuss further below, the Board is experiencing a significant amount of election activity and in 2006 held one of the largest elections in ALRB history. The Board is relatively small and has worked with the Labor and Workforce Development Agency (LWDA) and its sister agencies to fulfill our mandate. The Board has tried to prepare for situations where regional staff is unable to conduct the election without additional personnel by developing a pool of retired annuitants and employees within other departments to draw upon, and entering into a Memorandum of Understanding with the National Labor Relations Board (NLRB) to assist with conducting such elections.

The current and projected budget climate will make it necessary to find ways to help our staff carry out the ALRB mission. To this end the Board is currently working on a Case Tracking and Management System, a first for the ALRB, to have a database that will allow the Board to better document the trends in workload increases, assess staff allocation of time and process cases more

quickly. I believe this will allow us to use our existing resources more efficiently and allow us to better document staffing needs.

2. What do you see as the major challenges facing the board?

Meeting the ALRA Mandate with Reduced Resources: The ALRB once had several regional offices and a few hundred employees. The ALRB's current budget is \$5.1 million with two regional offices and one subregional office. ULP charges, which drive Board workload, have increased 44% over the past year. Election activity has also steadily increased over the past two years. If the current trend continues, the Board's minimal staff will become increasingly problematic.

The ALRB has 35 employees. 20 of these employees work in the regional offices. Two offices have no support staff. Regional office staff is under the supervision of the General Counsel; however, all regional employees work on both elections (Board jurisdiction) and the prosecution and investigation of charges (GC jurisdiction). The Board's workload is completely dependent upon regional office staff's ability to process their workload. Recently, the Board and General Counsel decided to downgrade the El Centro Regional Office to a subregional office and redirect staff to address the significant workload increases in our Visalia Regional Office. The Board and General Counsel will need to continue to work together to address ways to assist staff in meeting their statutorily mandated functions.

Reducing Key Person Dependency/Retirements: I facilitated a meeting in late November, 2007 with ALRB executive staff and key personnel to discuss ongoing risks and vulnerabilities facing the ALRB. This discussion led to the identification of three interrelated issues including having a single employee to handle accounting and budgeting functions and no available staff to train as a backup; an expected increase in the rate of retirements; and increasing reliance upon part-time retired annuitants to handle business services, including purchasing and contracting. Their restricted hours and unsure tenure make it difficult to maintain the necessary separation of duties.

Outreach: The Board has done a good job in finding innovated ways to reach out to the farm worker community, the vast majority of which are not unionized, to let them know of their rights and of the ALRB's existence, but this will continue to be a significant challenge.

Future MMC Challenges: On a legal front, there is always the possibility of an employer challenging the constitutionality of MMC in an appellate district other than the 3rd District Court of Appeal, in an attempt to get a split in authority that the California Supreme Court would have to resolve. The California Supreme Court denied review of the 3rd District's decision in Hess Collection Winery upholding the law but that does not prevent a contrary decision in another District Court of Appeal.

3. How have the shrinking budgets and staff reductions over the past several years affected the board's ability to meet its workload demands in a timely manner?

Timely processing of ULP charges and election petitions can be a challenge, some times harder than others depending on the level of activity. The Board is statutorily mandated to hold a

representation election within seven days. The Board has been able to meet this mandate. However, each election requires the redirection of all employees to the election function and all work on unfair labor practices is placed on hold. This creates delays in the investigation and processing of ULP charges. This also reduces the number of cases the Board can then set for hearing and, thus, delays the ultimate resolution of the cases and the implementation of any remedies ordered. Moreover, these problems can be exacerbated if consecutive elections occur.

What measures has the board taken or considered taking to more effectively and efficiently utilize staff and other resources?

Minimize Reductions in the Regional Offices: Rather than further hamper regional staff's ability to carry out their duties, required reductions in resources have primarily been made at the Board's Sacramento headquarters. Cuts have included both legal staff in the Executive Secretary's Office (ES) and Board administrative staff. None of the board members have secretaries or assigned administrative support. The ES, responsible for ruling on election objections, motions, and hearing oversight, previously had two attorneys to assist him with his duties. Currently, if the ES needs legal support, one Board Member assigns their staff counsel which requires counsel to recuse themselves from any involvement in the case, leaving that Board Member without their attorney.

Establish Structures to Meet Workload Demands: In an attempt to handle increases in activity, the Board has created a pool of retired annuitants and entered into an MOU with the NLRB to loan staff. The current increase in both pre-election activity as well as elections themselves is exhausting staff resources. In recent weeks, regional staff has conducted elections in four consecutive weeks. The Regional Director will begin using a retired annuitant to back-up staff on handling the significant pre-election investigatory requirements and to free up staff to continue work on ULP charges.

Oppose Reductions to Critical Administrative Functions: The ALRB has only three people to carry out all their administrative functions (budget, accounting, personnel, contracting, and purchasing) making it extremely difficult, if not impossible, to meet the separation of duties and firewall requirements that are legally required. LWDA has supported the Board in its efforts to avoid further reductions in these areas and coordinated assistance with these functions from other labor departments when needed.

Technological Improvements: The Case Tracking and Time Keeping Management System discussed above will have the effect of reducing the time it takes to gather information for internal purposes or in response to outside requests for information, as well as, reducing the time staff takes to fulfill the timekeeping requirements. In addition, the Board invested in videoconferencing equipment to allow for meetings with regional staff without having to incur travel costs and take up valuable time travelling the significant distance between the three staff locations and headquarters.

4. What is the Board doing or planning to do to meet the challenge of filling expected vacancies with qualified staff?

At a minimum, the Board is cross-training administrative employees to the extent possible. The Board is also preparing written procedures for the positions in accounting, personnel, and business services. These written procedures will attempt to provide additional guidance to new hires. The Board Chair is also participating in statewide succession planning meetings. I also administer the Board's Summer Legal Internship program which exposes local law students to the Board's work. The Board's small size allows the law students to handle significant legal research projects and when possible work at elections.

5. In what ways, if any, have the increased use of farm labor contractors instead of direct hires and mixed work affected the board's ability to enforce the ALRA?

Increased Use of Farm Labor Contractors: Based on the cases that have come before the Board and discussions with staff, the increased use of farm labor contractors has definitely affected the Board's ability to enforce the ALRA. The use of a farm labor contractor often increases the difficulty in identifying the proper employer since it is the farmer who contracts with the labor contractor and not the labor contractor itself that is considered the employer under the ALRA. This particularly comes into play during the investigation of the election petition which must be completed within a compressed statutory time frame to meet the ALRA requirements.

In addition, due to the transitory nature of the agricultural workforce and its high turnover rate, any delay in an investigation can result in the unavailability of witnesses. Moreover, since many workers hired by farm labor contractors have no direct contact with the actual employer, they cannot assist the Board investigators with identification. Further, additional delay may result in the complaining employees being unable to identify, and staff's inability to locate, co-workers who may be potential witnesses in their favor. These same considerations may dissuade farm workers from filing unfair labor practice charges. Lastly, it is possible that the tenuous nature of the employees' relationship to the employer can make employees of farm labor contractors more difficult to organize, thus dissuading unions from organizational efforts.

Mixed-work Situations: Beginning in the early 1990s, the NLRB began to expand its jurisdiction by narrowing the definition of "agriculture," to which by law the ALRB must defer. As a result, an increased number of employees have found themselves engaged in what is called "mixed-work," where a portion of an employees work each day is subject to ALRB jurisdiction and a portion is subject to NLRB jurisdiction. This overlapping jurisdiction obviously is confusing to labor organizers and employers alike. Since this development, the ALRB has only seen a few cases involving mixed work and only one during my term. However, we know that mixed-work exists widely. What is unclear is to what extent are unions generally declining to organize at operations where mixed-work occurs, and the degree to which employees forego attempting to enforce their rights by filing unfair labor practice charges.

6. What actions does the board take to ensure the integrity of the union representation election process?

The Board is fortunate to have two Regional Directors, who are responsible for election oversight, with over 50 collective years of experience and hundreds of elections between them. Several procedural and legal safeguards exist prior to, during and after an election. A pre-election conference provides a forum for both parties to address election issues such as who is eligible to vote, when and where voting will occur, how and when different groups or crews will come to the polls and any other unresolved issues concerning the election. Participants include the union, employer and their counsel. Also prior to the election, regional staff visit the worksites and provide oral notice to the employees of the impending election, how it works and their rights prior to and during an election.

The Regional Directors have the authority, subject to Board review, to block an election where it is not possible to conduct a free and fair election due to unremedied unfair labor practices or, in more limited circumstances, when a complaint has issued. Also, in some cases the election is conducted to preserve the status quo, but the ballots are impounded pending the resolution of disputed issues.

On election day, the polling area, decided upon at the pre-election conference, is set up and only workers who are waiting to vote, observers and board agents are permitted in the area. The ballot box is constructed in the presence of all parties. The polling area is inspected to remove any campaign material and all parties are asked to leave. Campaigning is prohibited in the voting area. After all voting occurs, the ballot box is sealed and the board agent and each observer sign his or her name across the tape. When the ballots are to be counted, all parties inspect the ballot boxes and the vote is tallied twice.

Following the election, any challenged ballots are investigated by Board agents and a Report on Challenged Ballots issues recommending resolution to which both parties may file exceptions to the Board. Also within five days after the ballots are tallied, any person may file an election objections petition with the Executive Secretary's Office which may be appealed to the Board.

7. To what extent does the board rely on other entities to staff an ALRA election?

Generally, ALRB Regional Staff can conduct an election for up to 200-300 employees depending on geographic location of the work sites. During my term, the Board has relied on staff from the NLRB and/or departments of LWDA on two occasions. Both involved employee units of over 2000 employees. However, if several petitions are filed within short periods of time, additional staff may be needed since staff begin working incredibly long hours almost immediately after a representation petition is filed and it simply may not be possible logistically for the staff to work on consecutive or simultaneous elections without outside assistance.

How does the board ensure that outside staff is qualified to assist in ALRA elections?

Responsibility for the primary functions of the election, i.e. determining eligibility, handling challenged ballots, and instructing employees on voting procedures are handled by staff from

both the ALRB and NLRB with experience in handling elections. Generally, any additional staff will be used for routine functions such as setting up voting sites, watching the voting line and handling miscellaneous administrative functions. All of these employees participate in an orientation/training session prior to the election. If a special need arises, then staff may receive additional training in a particular area. In one election, staff from other labor agencies were used to sit with the crews that were working while waiting to be called to the voting site. These employees received additional training to identify and report inappropriate employer conduct. Since the ALRB only has seven days notice to conduct an election and the size of an election unit can range from three to 3000 or more, it is not possible to maintain a stable election unit, but the Board does maintain a list of all employees that have participated in an election to call upon if needed in the future.

8. What percentage of union representation elections were contested by one or both parties during your last term on the board?

Thirty nine elections were held during my last term on the Board. Of these, 23 were representation elections and 16 were decertification elections. Of the 23 representation elections held, election objections were filed in 9 cases (or 39% of the time). Of the 16 decertification elections held, election objections were filed in 11 cases (or 69% of the time). Accordingly, 51% of these elections were contested by one or both parties.

Of these contested elections, how many alleged that misconduct occurred which affected the results of the election?

Of the 20 contested elections, 18 election objection petitions were filed that alleged that misconduct occurred that affected the results of the election (90%).

In the two cases where the parties objected to the election on a basis other than "conduct affecting the results of the election," one concerned the Board's jurisdiction to conduct an election concerning the employees of a mutual water association (Sutter Mutual Water Company, Case No. 05-RC-01) and the other concerned an objection to the election based on a lack of peak, lack of proper service of the petition and failure to dismiss the petition where the employer had not remedied serious unfair labor practices (Coastal Berry Company, Case No. 02-RD-4-SAL).

9. Conclusions based on information gathered by Board staff regarding other card check systems.

Following the legislative informational hearing on the card check system in 2006, Board staff was asked to gather information regarding other card check systems. Specifically, staff was asked to look at other states, the federal legislation introduced, and the Canadian models, in anticipation of legislation being introduced at the state level. Staff provided the Board with several resource documents, however, no study was prepared. Upon introduction of SB 180, staff and Board focus shifted to analysis of the card check system as proposed. In keeping with historical practice, the ALRB did not take a position on the bill.

Staff reported that as of 2004, there were four other states that provided collective bargaining rights to agricultural workers via a board or commission that administers the law and conducts elections. However, none of these state laws are as comprehensive as the ALRA, nor do any have a card check system. Canada has utilized a card check system on a national scale for some time and some of the public collective bargaining statutes under the jurisdiction of the California Public Employment Relations Board were amended in recent years to provide a card check system of certification.

Generally, the card check system is intended to reduce delays in union certification elections and reduce opportunities for employer misconduct that can affect the outcome of elections, with no adequate method of remedying such conduct. Clearly, disputes are common following ALRB elections. What we do not know is if the delay caused by these disputes will shift from the filing of election objections following the elections to disputes over the validity of the representation cards and related ULPs following the submission of signed authorization cards.

I appreciate the opportunity to address the issues raised in your letter. If I am confirmed, it will remain my charge to fulfill the intent of the Legislature, as it is stated in the statute that created the Board, "that farm laborers, farmers, and all the people of California will be served by the provisions of the Agricultural Labor Relations Act [act]."

Thank you for your consideration of my appointment. I am available to address any additional questions or concerns. I can be reached at (916) 651-7622.

Sincerely,

A handwritten signature in black ink, appearing to read "Cathryn Rivera-Hernandez", with a stylized flourish at the end.

Cathryn Rivera-Hernandez

CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES

P.O. Box 419064, Rancho Cordova, CA 95741-9064



Senate Rules Committee

APR 15 2008

Appointments

April 15, 2008

The Honorable Don Perata, Chairman
Senate Rules Committee
Attention: Ms. Nettie Sabelhaus
State Capitol, Room 420
Sacramento, California 95814

SUBJECT: CONFIRMATION HEARING

Dear Senator Perata:

Thank you for your consideration of my appointment to serve as Director of the Department of Child Support Services (DCSS) and for the opportunity to provide responses to the questions in your letter of March 21, 2008. I look forward to meeting with you and the other members of the Senate Rules Committee as you consider confirmation of my appointment.

1. *What do you hope to accomplish during your tenure as director of DCSS? How will you accomplish these goals? How will you measure your success?*

First of all, I want to express my deep appreciation to the Governor for giving me the opportunity to contribute to the unique mission of the child support program. Few positions in government offer the ability to contribute so directly every day to the well-being of children, to make sure they can count on their parents for financial support, and to help parents continue to be involved in their children's lives. In advancing this mission as director, I see two goals as key to the future of California's child support program.

My first goal is to achieve federal certification of California's single statewide automation system. We are in the final stages of the certification review process. Conversion of local child support agencies (LCSAs) to the new system continues successfully and will be completed by November of this year. This goal has been a personal mission for me since 2002, and I will be extremely proud to be on hand when our team crosses this finish line.

The women and men who constitute California's child support program have done a remarkable job in the past eight years advancing the program's mission to promote financial stability for California's children and families. We have achieved steady

improvement in program performance and increased child support collections. This steady improvement has occurred despite extraordinary demands on resources to plan and execute development of the statewide automation system and despite stagnant funding for LCSA operations that has resulted in nearly a 20 percent reduction in local staffing. While the LCSAs have in the past been able to maintain a steady increase in performance, any further reductions in program resources will result in revenue losses that will more than offset any anticipated savings.

My second goal is to stabilize child support program funding for the long run. Investment in child support services is cost effective for the state because it yields direct savings to the state general fund. Child support collections offset current and past welfare costs. Our estimates show that the cost of each additional child support caseworker in California is more than offset by the welfare recoupment that they can generate. In addition to these revenues, working families who receive regular child support payments may be able to keep their jobs and not have to resort to welfare for financial support. Medical support that our program obtains can also provide health coverage to children who would otherwise have to rely on Medi-Cal to pay the cost of health services.

The child support program will continue to achieve further improvements in cost effectiveness and further add to the net revenue that is generated for the state. Compared to other states' child support programs, California's cost effectiveness is low, and will not improve in the current year due to the high level of investment in the new statewide automated system. However, in coming years I expect to show significant improvement in cost effectiveness, primarily through three key strategies:

- Automated child support system investment will yield operating savings and greater efficiency once the system is fully rolled out and staff gain experience with its operation;
- Continued concentration on improving low performing counties will improve overall collection performance; and
- Reforming the business model can take advantage of scale economies offered by the single statewide automation system.

How will I measure my success? There is no other program in state government with a more comprehensive regime of performance measures that allow comparisons with other states and among local agencies. If I am successful in establishing long term financial stability for the child support program, that success will be directly reflected in continued increases in collections for families, increased reimbursement of welfare costs, and steady increases in federal performance measures.

2. *What are the major milestones for the single statewide automation system for the next 12 months, and is the department, the Franchise Tax Board, and the vendor on schedule to meet those milestones? When do you anticipate the completion of Version 2?*

The following are major milestones for the single statewide automation system in the next twelve months:

- June 2008 – Receive federal certification for our Alternative System Configuration approach that will remove California's risk of having to pay federal automation penalties. It will also entitle California to a 90% refund of penalties paid in SFY 06/07. The refund will total \$193 million.
- July 2008 to November 2008 – Continue county conversion to Version 2. As of May 2008, 39 counties constituting 42% of the statewide caseload will have converted to the new system.
- November 2008 – Convert the final county, Los Angeles, to Version 2, at which point all 1.8 million child support cases will be on the new child support system. This will position the state to request certification as a single statewide system and remove the federal funding cap on the project. It should be recognized that this November 2008 conversion is only two months later than the date originally scheduled in July 2003 when the project was initiated.
- January 2009 to June 2009 – Implementation of Version 3 which includes the retirement of the DCSS Intercept Data Base and California Child Support Recovery system. The functionality of these two systems will be incorporated into the new Child Support Enforcement System. Additional enhancements to the Child Support Enforcement System will also be released.

The project is on schedule to meet these milestones.

3. *Local involvement is an important element in the development of the statewide system. How is DCSS balancing state and local needs in the implementation of the project? What challenges have the counties faced in implementing the system and how has DCSS addressed these challenges?*

Throughout system development, testing, and implementation we have relied on intensive local involvement to help guide our work. Once the system is fully implemented, the continuing involvement of local users is essential to ensure that we meet all priority needs. We have instituted a project governing structure to include LCSAs in the ongoing decision-making process. The design and operation of this structure draws on the state's experience in governing the legacy consortia, CASES and ARS. The challenge we face is not a question of balancing state and local needs, but how to arrive at a broad understanding of overall program needs in the design and use of the system. The previous child support systems' architectures allowed individual LCSAs to operate in relative autonomy without significant effect on other LCSAs. With the establishment of statewide case synchronization and the single statewide database,

individual LCSA actions can now have a significant impact on cases in other counties. The challenge we face is to gain a collective understanding of how best to operate within a unified statewide program.

In addition to the challenge of rethinking child support as a statewide program, the program has faced a variety of operational challenges resulting from the complex implementation approach necessary to convert 58 counties onto a single statewide automation system. We have performed multiple conversions over a relatively short period of time. These conversions include the initial consolidation of all counties onto either ARS or CASES; conversion to the Statewide Disbursement Unit (SDU) and the single statewide database; and county conversions to Version 2. These changes have required extensive, continuous local training, support and problem solving as unanticipated issues arise.

We have implemented the statewide database and the SDU at the same time, which placed extreme demands on the DCSS design teams to ensure that parallel system development and implementation were in sync. We have also consolidated the existing ARS and CASES systems with the new statewide database to form the core for Version 2. Daily detailed communication between 58 local databases and the central database has proven to be a demanding design exercise. We have made a fundamental shift in overall architecture that has implications for many aspects of the program, including case management approaches, financial results, system response times and performance statistics. At all stages of the project we have assembled project teams, drawing extensively on local expertise to sort through these changes and understand how they affect operations and performance measures.

Any replacement system in its initial implementation makes workers less efficient than they were before the new system was implemented. Some of this is due to unfamiliarity with the system, which diminishes over time. New systems also have defects and design flaws that need to be fixed. Our project governance approach is structured to set the right priorities for making changes in the system to resolve these issues. We have faced the challenge of performing our daily work while resolving critical implementation issues.

It is important to recognize that all of this work is being done during a period when local resources have been steadily contracting. Yet despite these pressures, case related performance measures have shown steady increases. This is the best testimony for the incredible job our local and state child support staff have done during this challenging implementation, continuing to provide financial stability for the children and families of California.

4. *How will the department monitor the ongoing performance of the new system? What measures will be used to assess performance?*

With respect to technical performance issues, the Child Support Enforcement System contract specifies a set of performance measures that we will use to determine ongoing performance. Compensation for the business partner during the maintenance and operation period is tied to these measures. The performance measures relate to avoidance and clearance of system defects; system availability; help desk waiting times; and a quarterly scorecard that rates performance in system change management, execution of the knowledge transfer to state staff, defect repair, and conformity with standards including up-to-date documentation. The contract and associated documents also specify service level objectives for system response times.

With respect to how the system serves the fundamental mission of the child support program – advancing the financial stability of families – I will continue to review and monitor the detailed information we receive on collection statistics and performance measures to assess the effectiveness of the new system. I will also be looking for opportunities to use the system to its best advantage and make modifications where there are opportunities for improved performance.

5. What do you view as the primary role and responsibility of the state in administering the child support program? Of the counties? How do you ensure a positive working relationship and communication with the counties so that the experiences of the counties are incorporated into policy and budget changes, and that counties receive clear and consistent direction from the state?

The Department has the leadership role in directing and overseeing California's child support program. This role is carried out by:

- Establishing a vision, direction, and priorities for the program;
- Setting program policies;
- Developing, implementing, and operating the automated child support system;
- Leading the effort to improve statewide program performance in collecting child support and on key federal and state performance measures; and
- Providing direct oversight and supervision of the local child support agencies.

The state must provide leadership that ensures that all state and local resources are pulling together to advance program goals and provide the best possible services to families.

The LCSAs are responsible for performing the child support enforcement activities required by law and regulation in a manner prescribed by the Department. LCSA staff have frontline program experience and knowledge essential in assisting the state to make program decisions.

We routinely call upon the expertise of the LCSAs and seek input from:

- The President and Board of Directors of the Child Support Directors Association (CSDA);
- The standing committees of CSDA, including the finance committee and the policy and regulations committee;
- Ad hoc workgroups of state and local representatives focused on particular issue areas, for example, the Collaborative Business Plan Workgroup that includes representatives from the local child support agencies and CSDA members, as well as executive staff of the Department; and
- The governance structure and workgroups of the California Child Support Services Automated System Project.

For many years, we have worked extensively with representatives of the LCSAs to develop and implement the California Child Support Automated System. This collaboration has been essential to our progress and success to-date.

The past eight years have been a time of constant and dramatic change for California's child support program, and the next few years will not be any different. This level of change requires timely and open communication between the state and LCSAs. It has been necessary to establish effective communication structures to keep the dialogue going between the LCSAs and all parts of the state department. It has also required a constant retooling of those communication structures to make sure they meet the ever-changing needs of the program.

A critical element of my job as Director is to listen closely to LCSA directors and managers to understand local program problems, concerns, fears, and successes. It is my job to make sure that communication is effective and action oriented so that critical problems can surface and solutions can be implemented.

Based on my experience at DCSS and my knowledge of the team of professionals who lead the LCSAs, I can assure you that we will be able to maintain the cooperative, forward looking relationships essential to our program's success and provide a high level of service to our customers.

6. How do you characterize the current relationship between DCSS and the local child support agencies? Is there anything that you would like to see altered in this relationship? If there is, please be specific about what and why.

The child support program is in the midst of a profound transformation, which is in part a product of our new automation architecture, but also due to the governance changes from the reforms enacted in 1999. Fifty-eight relatively autonomous local programs are being reshaped into a single statewide child support program with much greater interdependence among state and local agencies. This new organizational approach requires a higher level of coordination and collaboration among all the organizations

and individuals that have a role in the program – including the state DCSS, LCSAs, the courts, welfare agencies, community based organizations, and child support customers. Our challenge is to understand how to operate the organizational structures to promote the collaboration essential to our effective operation.

I believe that I currently have all the tools necessary to lead this program. My experience is that local directors are committed to improving performance and are active participants in the development of a statewide vision for the program.

7. How do you ensure that local child support agencies reach their performance targets?

In consultation with key LCSA directors, DCSS has established annual performance targets for two of the federal performance measures where performance in California is below the national average – percent of current support collected and collections on past due support . These two measures also have the greatest impact on families. In recent years targets have been set at a level that would enable the state to reach the performance goals specified in our strategic plan. In the past year, targets for most counties required maintaining performance that exceeded the national average. Targets for the lowest performing counties were set at a level that required more significant improvement. This approach reflected the reality that many counties would have to divert considerable time and effort to system conversion. However, the lowest performing counties, most of whom were scheduled to convert to Version 2 later in the year, were in a better position to improve performance.

I believe that the commitment of the LCSA directors is essential for performance improvement. This means that it is my job to communicate directly and regularly with LCSA directors to improve performance, meet targets, and put more money into the hands of families. This communication must be informed by accurate performance data. During the course of the year DCSS monitors the performance of each local agency, tracking the two performance measures with established targets, in addition to other federal measures. DCSS reviews monthly, quarterly and annual reports on all measures. Progress is reviewed with individual LCSAs as well as in several multi-county venues where specific practices are shared and results are assessed.

In addition to performance on federal measures, DCSS conducts compliance reviews to ensure that case processing rules are followed and federal timeframes are met. LCSAs that fail compliance reviews are required to complete corrective action plans.

Existing statute provides me the authority to take necessary action with respect to LCSAs that are not making progress in meeting performance targets or that fail compliance reviews. Actions can include cooperatively establishing corrective action plans or, in cases of persistent non-compliance and lack of cooperation, assuming responsibility for local operations.

8. *What initiatives to improve county performance are the most effective and how have you made that determination?*

The following initiatives have been my primary focus while simultaneously implementing the statewide child support automation system:

- The Key County Initiative has focused our efforts in LCSAs that have the greatest opportunity for improvement while taking into consideration conversion responsibilities that occupy a significant share of staff. Each of the identified counties performed an extensive review of their program operations to identify the most promising opportunities for improvement. The results have been fruitful. Five of the eleven key counties have increased performance to levels above the thresholds established for inclusion in the initiative. Recently, I officially ended corrective action status for the San Bernardino County LCSA due to their continuing commitment to improve performance and impressive performance numbers.
 - The Big 6 Initiative established direct contact among the six largest LCSAs to share information and strategies and emphasize a focus on performance improvement. I meet quarterly with the Directors of the largest six LCSAs, which include Los Angeles, San Diego, Riverside, San Bernardino, Sacramento and Orange counties. The "big six" LCSAs represent 58% of the statewide child support caseload. The improvement efforts in these LCSAs are critical to California's ability to improve statewide performance. We review monthly progress on federal measures, share best practices, and ensure that performance enhancement strategies are resulting in the desired outcomes. These meetings also provide a mechanism for DCSS to regularly monitor the LCSAs' progress in meeting performance milestones and goals. It also reaffirms the close working relationship between my executive management team and the LCSA directors. In addition, it encourages a healthy competition among the LCSAs as they seek to improve performance.
 - I have established a structured business planning process with the LCSAs to identify joint state/local strategies for improving effectiveness and efficiency. Together we have identified a set of performance improvement activities to accomplish during the balance of this year and are formulating and prioritizing a set of strategies to pursue during the coming year. Those strategies, combined with DCSS Quality Assurance functions, LCSA business plans and the DCSS strategic planning process will provide the most effective path to improved performance.
9. *Based on the experiences with the COAP program to date, what are some of the potential program improvements that have been discussed? Are there changes you would recommend for the program? Be specific.*

DCSS has made specific proposals as part of this year's budget to improve the cost effectiveness of the Compromise of Arrears Program (COAP). We have proposed amendments to the existing COAP statute to allow the following changes:

- Allow local approval of compromises. Currently DCSS reviews all proposed compromises over \$5,000. We propose to delegate the compromise decision to LCSA directors, and initiate reviews of local decisions to ensure that the program is being administered accurately and uniformly throughout the state.
- Simplify documentation requirements.

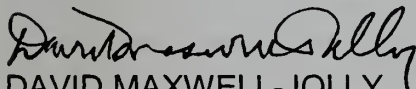
DCSS proposes to make additional improvements to COAP based on the additional recommendations of the Department of Finance Performance Review Unit report in order to increase program efficiency and effectiveness. In accordance with the report's recommendations, I propose to implement these changes in consultation with LCSAs and other stakeholders. The additional changes include:

- Allowing participation of NCPs who have multiple cases in multiple counties.
- Allowing participation of NCPs with less than \$5,000 in government-owed debt.
- Simplifying the application for compromise.
- Translating COAP forms into threshold languages to improve outreach.

In summary, the Senate Rules Committee and the State Legislature can be assured that I am committed to pursuing the Department's mission of promoting the well-being of children and the self-sufficiency of families, achieving federal certification of the statewide child support automation system, meeting all federal program requirements, and improving overall statewide program performance.

I look forward to working with the Legislature on the important issues facing California's families. I welcome further discussion of the opportunities and challenges facing our program during the Senate Rules Committee hearing to consider my nomination to serve as Director of the DCSS.

Sincerely,


DAVID MAXWELL-JOLLY
Director

Enclosure: Form 700, Statement of Economic Interest

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DEPARTMENT OF INDUSTRIAL RELATIONS

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April 15, 2008

Senate Rules Committee

The Honorable Don Perata
Chairman, Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

APR 15 2008

Appointments

RE: Response to Senate Rules Committee Questions for John C. Duncan
Date of Confirmation Hearing – May 14, 2008

Dear Chairman Perata:

Thank you for the questions submitted in your letter of March 20, 2008. I am pleased to provide the following responses:

1. *Please provide a brief statement of your goals as Director of the Department of Industrial Relations.*

The Department of Industrial Relations (DIR) is comprised of many important divisions, including the Division of Labor Standards Enforcement (DLSE), State Mediation and Conciliation Services Division of Occupational Safety and Health (DOSH), Self Insurance Plans (SIP), Division of Workers' Compensation (DWC), Division of Labor Statistics and Research (DLSR), and the Division of Apprenticeship Standards (DAS), together with related boards and councils.

The department's mission is to "promote, protect, and improve the health, safety and economic well-being of Californians in the workplace." Toward this end, I brought all of the DIR division chiefs together in mid-January to develop a strategic plan for the department. We reached consensus on a vision statement that holds that "the department will be an easily-accessible, user friendly partner with all employers and workers in contributing to the success of California's economy."

Five key strategies were developed during the planning:

1. Service Quality: Deliver the highest quality service to a diverse customer base with courtesy and efficiency.
2. Fiscal Responsibility: Operate the department in the most cost-effective and efficient manner in the accomplishment of our mission.
3. Human Resources: Recruit and retain a high quality and knowledgeable workforce.
4. Technology: Leverage resources and industry best practices to optimize the flow of data and information to support the work of the department across division lines.

Chairman Don Perata
April 15, 2008
Page Two

5. Partnership: Develop alliances in both the public and private sectors to achieve the department's goals.

DIR divisions will be focused on both education and enforcement and key priorities such as the department's role in supporting the rebuilding of California's infrastructure. The following are some examples of activities the department has taken on since my appointment in August 2007 that demonstrate our strategy of coordinated outreach to employers and workers:

1. Director's Advisory Committee on Public Works was established (December 2007) – Approximately 200 members of the regulated public came together with the director and appropriate division chiefs to identify opportunities to assist those engaged in public work in California. This was followed by a March 2008 subcommittee meeting. Another meeting is scheduled for mid-June 2008.
2. Public Works Training (April 2007) – the Department held an educational conference in Northern California with almost 400 members of the public participating. A similar conference is planned for mid-September in Southern California.
3. The "I Built It" public service announcement campaign was developed and rolled out statewide to educate workers and employers about the opportunities in apprenticeship and the unprecedented need for skilled craftspeople in the building and construction trades.
4. Workers' compensation is no longer a crisis for California employers and the California economy. At the same time, we need to be vigilant about the effects on injured workers. DWC continues to review the impacts of the reforms and work with employers and employees to improve components of the reforms. DWC is currently heading an advisory group that is working to find a way to ensure injured workers can start retraining as soon as it is clear they cannot return to their previous jobs.
5. DIR is currently implementing legislation that provides for cooperation between the Labor Commissioner, the Department of Insurance, the Employment Development Department, and the Workers' Compensation Insurance Rating Bureau to review regularly a random sample of employers who are paying wages but do not appear on the list of insured employers. Those employers who are illegally uninsured will be referred to the DIR or to the Insurance Commissioner (IC) for further action.
6. We have increased DIR commitment in the education and enforcement efforts of the Economic and Employment Enforcement Coalition (EEEC). Education efforts for employers include training sessions through employer associations as well as post-inspection trainings for those who were found to be in violation of the law. Education is also extended to employees through partnerships with employee organizations and through targeted radio interviews. DIR has worked with the EEEEC to identify industries that have an increasing number of labor and safety violations. As a result of this effort, the EEEEC has added the pallet manufacturing and auto body repair industries to its targets.

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April 15, 2008
Page Three

7. DIR has amplified its focus on labor violations in the underground economy by supporting the increased volume of inspections conducted by the Labor Commissioner through DLSE's Bureau of Field Enforcement.
8. DIR has developed or significantly improved user-friendly Web sites to help employers and workers easily obtain needed information and guidance.

Under my tenure at DIR we will aggressively work to create a level playing field for all employers and workers by reducing the size of the underground economy and by providing education and enforcement concerning public works requirements.

2. *The governor's budget proposal includes \$3.4 million in special funds to continue the department's participation in the Economic and Employment Enforcement Coalition, a partnership of enforcement agencies that identifies the worst offenders for targeted workplace enforcement actions. How would you prioritize DIR's enforcement activities for optimal efficiency and effectiveness?*

The EEEEC is one of a number of enforcement programs within DIR, each having its own distinct purposes. The EEEEC is designed to accomplish its purposes through sweeps of certain low-wage employers in concentrated geographical area throughout California based on a confidential yearly calendar. DLSE performs its field enforcement functions through complaint-driven inspections, Deputy Labor Commissioner self-initiated inspections of individual employers, and industry-wide enforcement actions where a particular need for such actions is identified. DOSH also acts on safety complaints and reports of industrial accidents, along with its statutorily mandated regular inspection duties.

Since the EEEEC was first implemented in 2005, the DIR has been the lead department in its enforcement activities. We have done this through the active participation by investigators from both our DLSE and DOSH in every EEEEC sweep. The EEEEC enforcement sweeps take place throughout the state at least three weeks each month. During the first two full fiscal years of operation (2005-07), EEEEC conducted 2,970 enforcement inspections resulting in the identification of over \$109 million in unreported wages and over \$39 million in citation assessments, projected penalties and payroll tax liabilities.

Given a structure that provides for overall coordination through the Labor and Workforce Development Agency (LWDA), the EEEEC has proven to be an increasingly effective tool for attacking the underground economy in California. It has done this through identifying offending employers in a number of low wage industries, as well as the construction industry, and either causing them to come into compliance with California wage, hour, worker safety, and tax laws, or shutting these employers down so they cannot continue to violate California workers' rights and unfairly compete with law abiding employers in those industries. EEEEC's local outreach and educational programs have also assisted many employers to come into voluntary compliance without the need for inspections and other enforcement actions.

Chairman Don Perata
April 15, 2008
Page Four

Extensive public information activities by EEEEC, including regular press participation in both EEEEC enforcement sweeps and outreach programs, has also helped focus public attention on the problems of the underground economy.

All enforcement roles are a priority for DIR and we will seek to improve their efficiency and effectiveness by increased use of current and historic data in the development of focused selection criteria, and performance measures will be maintained for all enforcement activities.

3. *Recently you implemented regulations to strengthen DIR's oversight of existing LCPs. What measures, if any, would you recommend to ensure labor compliance on projects funded by the 2006 bond acts and future publicly funded projects?*

In addition to labor compliance programs, there are several avenues for enforcement of California's prevailing wage laws, including enforcement actions undertaken by DLSE, awarding bodies' oversight, actions undertaken by labor compliance programs, actions undertaken by joint labor-management committees, and private actions brought by workers. DIR has undertaken new measures designed to assist these enforcement mechanisms and promote compliance with these wage obligations. In addition to revising the regulations governing labor compliance program activities, DIR has acted to ensure that labor compliance programs actively fulfill their obligations, or face revocation of their approval to operate. Moreover, awarding bodies are fundamentally responsible for compliance with prevailing wage law and must specify, either in the call for bids, bid specifications and resulting contract, or make available, the prevailing wage rates for each craft, classifications, and type of worker needed to execute the contract. Because awarding bodies are responsible at this basic level to ensure compliance with prevailing wage laws, it is essential that awarding bodies have a full understanding of these obligations. To promote that, DIR has convened well-attended public forums specifically designed to improve the awareness and understanding of prevailing wage laws, as well as the tools that DIR makes available to those that must comply with them. I am committed to continuing our public dialogues and to refining the resources DIR provides in order to ensure our prevailing wage laws are widely understood and adhered to. I believe this type of systematic outreach and education, in conjunction with working closely with the Labor Commissioner to maximize DLSE's activities, will strengthen the many existing avenues for prevailing wage enforcement and ensure compliance.

4. *Do you think the provisions in AB734 (Evans) will ensure adequate state supervision of apprenticeship programs? Please explain.*

AB 734 (Evans) effectively returns the language surrounding the requirement that applicants for new programs demonstrate "need" to the language in effect in 1999 prior to AB 921 (Keeley). The actual value of adding the "need" language has proven to be questionable. Since its addition in 1999 no program has been denied approval based upon its ability to demonstrate need. With the 2006 passage of \$43.3 billion in infrastructure bonds it is expected that there will be a need for over 200,000 new craftspeople in the building trades to complete an unprecedented amount of work and to replace those retiring from the trades. AB 734 does require that "the applicant submit to the chief a written plan providing a reasonable timetable to

Chairman Don Perata
April 15, 2008
Page Five

obtain sufficient commitments from employers to employ the new apprentices so as to ensure, to the extent feasible, consistent with the rates of employment for existing programs in good standing in the applicable trade, that the new apprentices will be employed continuously throughout the entire term of the apprenticeship."

The revisions and refinements to the auditing requirements were developed with consensus from both signatory and merit shop programs and give DAS the ability to focus audits on those programs whose performance statistics suggest the need for additional oversight. The division received approval for four new audit staff positions in 2007 and audits are being performed aggressively.

The Bureau of State Audits issued an audit of DAS in late 2006. The division used the audit report and other "best practices" to make numerous operational improvements that have been positively received and noted by members of the apprenticeship community.

I am confident that the provisions of the bill will ensure adequate state supervision of apprenticeship programs.

5. *As a nonvoting, ex-officio member of the SCIF board of directors, please describe the role you would take in providing expertise and adequate oversight for SCIF operation and programs.*

As the head of a large state department whose mission is to promote, protect, and improve the health, safety, and economic well being of wage earners, to advance opportunities for profitable employment in California, and to provide a level playing field for law-abiding employers, I am in a unique position to promote positive change at SCIF. I have more than 20 years of experience dealing with labor and employment issues in both the private and public sectors. Prior to my appointment as director of DIR, I served as a member and chairman of the Public Employment Relations Board from 2004 to 2007, overseeing the state's collective bargaining statutes. From 1999 to 2004, I worked in the private sector, first as the president and chief operating officer of an information systems company specializing in software and internet solutions for preventing workplace injuries, then as the president of my own firm where I advised corporate, legal, and government clients and specialized in navigating labor-related regulatory issues.

Thus, I have a broad base of knowledge in workplace health and safety and workers' compensation, SCIF's core business, hands-on experience in labor relations dealing with employee-employer issues that occur with any employer such as SCIF, and experience managing large organizations. Through my private sector experience, I also have familiarity with the issues that face the small employer policyholders of SCIF. Finally, having served in various governmental positions over the years, I understand the need for accountability and transparency. I recognize that this is a critical period in SCIF's history and I quickly became an active member of the Board using my experience and qualifications to work collaboratively with my fellow board members to promote positive change at SCIF.

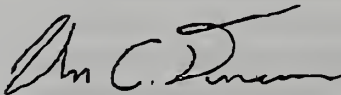
Chairman Don Perata
April 15, 2008
Page Six

6. *What measures would you recommend to support SCIF's unique role of providing a safety net for employers and serving as a stabilizing force in the highly competitive California's workers' compensation market place?*

Ensuring that affordable workers' compensation insurance protection is available to California employers is SCIF's fundamental mission. SCIF is now in the best position to carry out that mission with a strong board of directors that emphasizes professionalism, accountability, and integrity. I support increasing the size of the board while broadening its composition. Having a professional executive team in place that the board can provide guidance and oversight to, possibly through specialized subcommittees of board members, is critical. In that regard, I want to commend Janet Frank, the current President, for the work she has done in restoring faith and integrity to the organization.

Thank you for the opportunity to answer your questions and for your consideration.

Sincerely,



John C. Duncan
Director

California Law Revision Commission Goal Statement

By
Sidney M. Greathouse

In my previous statement to the Senate Rules Committee, I provided as one of my long term goals as a Commission member my desire to assume a leadership role. Since my appointment, I have had the pleasure of working with an exceptional group of legal professionals to resolve legislative anachronism and inconsistencies. As a testament to the recognition I have gained from my peers, I served as Vice Chair from 2006 to 2007, and am now honored to serve as Chair for 2007-2008. This leadership role has been very rewarding to me on both a professional and personal level. Professionally, the positions of Vice Chair and Chair have helped me gain a better understanding of the State's legislative process, and the hard work and dedication that the Legislature and Commission put into getting laws enacted. On a personal level, my reappointment allows me to continue serving the people of the State of California in an effort to make their daily lives a little bit better.

As the Chair of the Law Revision Commission, I will continue working on the Commission's Agenda for the upcoming year. The Legislature has entrusted the Commission and its Staff with a great deal of work on very important matters to the State. Working with the legislature, the Commission's staff and interest groups, I intend to lead the Commission in completing tentative recommendations on mechanics liens, donative transfer restrictions and the reorganization of deadly weapons statute. During my term as Chair, the Commission has encountered some minor obstacles in moving several of its tentative recommendations forward through the legislative process. An important goal for this term is to revisit these items, work directly with the sponsors of the bills and interest groups to alleviate any concerns regarding the Commission's proposals and reintroduce our tentative recommendations in the future.

Upon completion of my term, I intend to continue in a role that would allow me to help guide the direction of the Commission. Prior to the expiration of my appointment, I would like to serve a second term as Chair, drawing upon all of the experiences and opportunities of my prior term to help improve the overall efficiency and success of the Commission's work.

Goals Statement of Pamela L. Hemminger

I would hope to contribute to the California Law Revision Commission by continuing the service historically performed by the Commission in working on the projects entrusted to it by the Legislature. My overall goal would be the continued improvement of California law. In particular, I believe the Commission plays a valuable role by focusing the expertise of the dedicated staff and Commissioners on the study of technical and complex areas of the law and improving it, as necessary, by drafting statutes for legislative consideration that are clear and logically organized. The Commission also performs a valuable service in consolidating in one place provisions of the law that have been widely scattered throughout the various codes. In doing its work, it is important that the Commission provide an opportunity to all those concerned with an area of law to provide input, while remaining neutral and objective, in perception and reality, in carrying out its work.

In the short term and more specifically, I hope to continue to provide assistance with the projects already assigned to the Commission, building on the work already performed. Some of these areas are complex, and I am determined to continue to devote the effort necessary to be helpful in the crafting of the draft legislation and the accompanying comments. In particular, I am proud of past accomplishments as a Commissioner in working in the areas of governance of common interest developments, mechanics lien laws, donative transfers upon death deeds and civil discovery improvements. These areas all presented challenges in terms of scope of subject matter and legal complexity and required literally hundreds of hours of work. My background as a litigator was particularly helpful with respect to discovery issues and evidence issues. I am also proud that I was elected Vice-Chair of the Commission last year.

My long-term goals include ensuring that the work product of the Commission remains of the highest quality and that the work and processes of the Commission be regarded as objective and neutral, such that the Legislature would continue to view it as a valuable resource and entrust it with projects studying and drafting legislation. This promotes the efficiency of the law-making process, allowing lawmakers to spend time on policy decisions, without expending time working out the myriad of technical issues and gathering information that can be collected and synthesized, as appropriate, by the Commission for legislative consideration. My goals also include maintaining the collegial and high-level of discourse among Commissioners and staff.

To achieve these goals I will continue to put in the long hours necessary for in-depth review of draft work product and of the materials submitted by the various constituencies interested in the subject matter in question. Respectfully listening to the views of fellow Commissioners and others is also critical. Success will be measured by the Legislature continuing to entrust the Commission with projects, by the Commission continuing to produce work of the highest quality and by the various constituencies feeling that their views have been heard and appropriately considered.

I would be most honored if the Legislature sees fit to permit me to participate in the Commission's work.

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Senate Rules Committee

APR 21 2008

Appointments

April 18, 2008

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NS

SENATOR DON PERATA

APR 23 2008

The Honorable Don Perata, Chairman
Senate Rules Committee
California Legislature
State Capitol, Room 420
Sacramento, CA 95814-4900

RE: May 7, 2008 Confirmation Hearing

Dear Senator Perata:

I am writing in response to your request for a statement in anticipation of the hearing on my confirmation as a member of the California Law Revision Commission. You have asked me to outline my short- and long-term goals for the commission, as well as my achievements as a past member.

Beginning with our accomplishments, I am pleased to say that the commission has proposed legislation on the three topics that I believed to take highest priority when I was first confirmed two years ago: these are mechanics lien law, common interest development law, and transfer-on-death deeds. If enacted, all three bills will work significant improvements for Californians. The improvements to mechanics lien law and common interest development law are both products of many years of study, and the subject of intense interest to many. The proposed improvements should make these very complex laws much more accessible and easier for lay people to use and understand. The study of transfer-on-death deeds was completed relatively quickly, and with significant input from a variety of stakeholders. We believe that having a transfer-on-death deed available in California would have a profound effect on many people in California whose most significant asset is their home. Being able to pass on their homes with a minimum of legal effort and expense could bring peace of mind to many deserving homeowners.

On an individual level, I have attended meetings regularly and contributed my knowledge and insights to the best of my ability. I also take every opportunity to bring the commission and its valuable work to the attention of everyone in my legal circle, encouraging them to participate by offering their views or proffering their own suggestions for law improvement. My exhortations along this line have generally been well received.

Looking forward, the staff is hard at work on another project of ~~nonsubstantive~~

Senate Rules Committee

APR 25 2008

The Honorable Don Perata, Chairman
April 18, 2008
Page 2

reorganization, this time to consolidate and simplify the deadly weapons statutes. Here again, improvement seems much needed, but not at all easy to sort out. By keeping an open mind about our tentative decisions and paying close attention to the views of stakeholders, I hope that we can find a solution that makes this body of law much clearer and easier to use.

Also high on our priorities at the moment are studies on attorney-client privilege after the client's death, and restrictions on donative transfer. Both are areas in which seemingly small changes can have far-reaching consequences, so careful attention and independent thinking are called for. Both subjects also happen to have powerful human-interest appeal. This makes them especially interesting to study, of course, but the interests of efficiency also call on us to be rigorous in focusing our attention on the material legal issues.

For the long term, the commission always has a long calendar of topics authorized by the Legislature for study. I continue to believe we should concentrate first on the ones that we have already devoted resources to. These include common interest development laws; trial court restructuring; assignments for the benefit of creditors; and award of costs and attorneys fees to prevailing parties.

I would like to take this opportunity to note how impressed I am with the commission's work ethic and work quality. My fellow commissioners are outstandingly regular and punctual in their attendance, thoroughly prepared in advance of meetings, and attentive to the business at hand. The commission's staff is also outstanding: every one of them is hardworking, pleasant to deal with, and produces work as good as any I have seen anywhere in my 20 years of practice.

I am utterly devoted to the process of law improvement, and working in such fine and dedicated company has been pure pleasure for me. I hope your committee will find it suitable to confirm my reappointment to the commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Duncan Lee", with a stylized flourish at the end.

SUSAN DUNCAN LEE
Deputy Attorney General

enclosure: Form 700

cc: Brian Hebert, Executive Secretary, Law Revision Commission

Leslie Lohse

To Whom It May Concern:

Thank you for this opportunity to express my short- and long-term goals during my tenure on the Native American Heritage Commission. The Commission assists California Native Americans in the protection and preservation of their cultural resources. Also, the Commission serves as an extremely vital communication link between the Native people of California and the non-native public, the development community, local and federal agencies, as well as educational institutions. Such communication will help facilitate an acquiescent manner and means of problem-solving dialogue between interested parties involved in a cultural resources finding.

For several years the Commission has lacked a sufficient number of members to perform necessary business. Therefore, my short-term goal is to become informed on past and present situations in order to facilitate an educated and cooperative conclusion to as many pending projects as possible.

As for any long-term goals, I would like to continue and further the Commission's work of enhancing the education, communication and cooperation of all interested parties involved in California Native American cultural resources issue. Most important is, to me, is education. When people are not properly educated, fear and suspicion can occur, which usually leads to hostility. The more educated all parties are about the laws, rules, regulations, and procedures dealing with the handling of Native American human remains and cultural resources, the more likely a cooperative and amenable mitigation plan will be concluded.

The work of the Commission is very important to the continued positive growth of the fine State of California and, yet the preservation, protection and respect for the California Native Americans' human remains and cultural resources. I am greatly honored to be considered as a member of such.

Thank you for your continued recognition and support of the work of the California Native American Heritage Commission.

Sincerely,

Leslie Lohse

Leslie Lohse
Paskenta Band of Nomlaki Indians

Senate Rules Committee

MAY 12 2007

Appointments

Senate Rule Committee
Hon. Don Perata, Chairman
State Capitol, Room 420
Sacramento, CA 95814-4900

RE: Statement for NAHC

Honorable Senator Perata,

I am pleased to submit this statement outlining my short and long-term goals for the Native American Heritage Commission ("NAHC"). As you may know, my mother, Mabel McKay was a founding member of the NAHC and I seek to implement her vision of California Native cultural renewal. The NAHC has many important duties that have been expanded with recent amendments to State law, including SB 18 and AB 2641 in the past few years.

SB 18 requires that cities and counties consult with California Native American tribes and imposes certain duties on the NAHC. It is my goal to ensure that the NAHC effectively performs these duties and works with all stakeholders to protect tribal cultural sites whenever possible.

AB 2641 amended the NAHC statute to provide a greater role for most likely descendants when multiple human remains are inadvertently discovered during earth-moving activities. It is my goal to ensure that the NAHC monitors such activities and is able to mediate disputes that arise so that all parties are heard and appropriate measures are taken to ensure that unearthed Native American human remains are re-buried in a culturally-appropriate manner.

To the extent that the NAHC has a voice in implanting the California Native American Graves Protection and Repatriation Act, I would like to see funding appropriated to the Repatriation Oversight Commission and state institutions educated on the importance of consulting with Indian tribes when they classify their "collections" and work to repatriate Native American human remains and cultural items to tribal claimants.

I am proud to serve on the NAHC and appreciate the Committee's actions to confirm my appointment.

Sincerely,

Marshall McKay
Tribal Chairman

Page 1 of 1

The following table shows the results of the experiment. The data is presented in a clear and concise manner, allowing for easy comparison of the different groups. The results are as follows:

Group	Mean	Standard Deviation	Significance
Group 1	12.5	2.1	0.05
Group 2	15.2	1.8	0.01
Group 3	18.7	2.5	0.001
Group 4	21.3	1.9	0.0001

The results indicate that there is a significant difference between the groups, with Group 4 showing the highest mean value. The standard deviation for Group 4 is also relatively low, suggesting that the data is tightly clustered around the mean. The significance level for Group 4 is 0.0001, which is highly significant.

Laura Miranda

April 21, 2008

The Honorable Don Perata
Members of the Senate Rules Committee
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814-4900

**RE: Statement for Senate Rules Committee Hearing for Laura Miranda's
Appointment to the Native American Heritage Commission**

Dear Senator Perata,

Thank you for the opportunity to submit this statement outlining my goals for the Commission.

As a Native American Heritage Commissioner I will work diligently and effectively to carry out the mission, responsibilities and duties of the California Native American Heritage Commission. The overarching mission of Commission is really that of protecting human dignity and basic human rights of Native American people.

In the short term, I would like to assist the Commission by bringing my personal expertise and experience to the organization. As a Pechanga tribal member and an attorney who has experience in bringing together tribes, local agencies and developers with positive results, I would like to personally assist the Commission by talking with those same groups about protection of sacred places and burial sites. One major hurdle in protecting these important places is that all parties do not completely understand the actual laws and the reasoning and history behind such laws. In addition, there seems to be a cultural divide with non-tribal entities appreciating the importance and significance of these places to Indian people and tribal governments. I would like to work to bring all interested parties to a place of understanding so that they can start to work creatively towards solutions and processes to protect these places. Such actions are of utmost urgency because as each day passes more and more of these places are being destroyed and will be lost forever.

I would also like to assist the Commission in clarifying its internal policies and procedures. For example, tribes and local agencies are not always convinced that decisions made by the Commission are actually a result of consistent established policies and procedures. I would like to work to ensure that as an arm of the State government,

~~Senate Rules Committee~~

~~APPROPRIATE~~

the Commission is functioning with appropriate consistent processes that carry out the intent of the law in the most effective manner possible.

In the long term, I would like to assist the Commission and Indian tribes in obtaining more definitive protections for Tribal sacred places, culturally important sites and burial sites. This could be accomplished through formulating a cooperative effort of all interested entities and working towards legislation and additional legal protections which would allow responsible development while still providing respectful protections for these places of vital cultural importance. For example, there is still no legal requirement that Native American burial sites and cemeteries be preserved and protected. Under current law Native American burial sites and cemeteries can be destroyed, removed and relocated. Our government has protections in place for endangered species and habitat areas that forbid disturbance and development, and the grave sites of Native Americans deserve no less protection. The unearthing of graves and burial areas of Native peoples is a human rights violation. As a Commissioner I am committed to work towards a change in this current policy.

Again, thank you for the opportunity to submit this statement. Please contact me if you need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Laura Miranda', with a stylized, cursive script.

Laura Miranda

cc: Senator Jim Battin
Senator Gil Cedillo
Senator Bob Dutton
Senator Alex Padilla

To: The Honorable Don Perata Chairman, Senate Rules Committee Members

Date: April 18, 2008

From: James C. Ramos, San Manuel Band of Mission Indians

Subject: Appointment to the Native American Heritage Commission

I have a strong interest in the preservation of California Indian History and Culture, specifically with Native American Remains.

I believe I can add to the Native American Heritage Commission by serving with the understanding, that California is one of the world's largest economies and that growth is inevitable.

With the current and future growth, the potential is very high that Native American Remains will be found. Knowing this, I believe that the ability to work together with developers and others who may inadvertently uncover Native American Remains, to provide a quick reburial process in accordance with Ca. Public Resource Code 5097.

Furthermore, I will work hard to provide cooperation with all involved entities in moving forward with a more proactive approach when dealing with Native American Remains.

James C. Ramos
San Manuel Band of Mission Indians

Senate Rules Committee

APR 19 2008

ADMINISTRATIVE

April 22, 2008

Honorable Don Perata
Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

Subject: Native American Heritage Commission, Confirmation Hearing

Chairman Perata:

My appointment to the Native American Heritage Commission (NAHC) is an honor. My commitment to protecting the sacred and burial sites of my native Chumash and of all native Californians is a responsibility I have taken most passionately for all of my life and I intend to continue that commitment as a Commissioner. At a minimum, I plan on exercising this responsibility by attending all meetings and special events convened by the NAHC and by respectfully representing the NAHC wherever I can.

My first goal is to put in place at the NAHC office a complete inventory of the sacred sites in my native Chumash territory. This includes religious shrines as well as burial sites.

Second, it is my goal to assure that Most Likely Descendants designated by the NAHC to protect burial sites clearly communicate back to the NAHC their reports and information on re-burials and the disposition of resources under their care.

Long-term goals include helping NAHC raise the resources necessary to fully execute its legislative charge to protect our resources. I am also interested in helping to address and change as appropriate the laws and regulations for the protection of sacred sites on lands zoned for agricultural uses.

Continuing my current work, it is my goal to help put together educational programs for the broader community and our partner state and local agencies so that they might better understand the mission of the NAHC and the value of respecting and preserving our native heritage.

I will measure the success of reaching these goals by working in close contact with NAHC staff on the inventory of my region's cultural assets, by working with staff and other leaders to track our action on policy, and by continuous communication and input of my peers.

Thank you for your interest in the NAHC and my qualifications to serve. Should you have any questions, please do not hesitate to contact me at 805-646-6214, or jtumamait@sbcglobal.net.

Sincerely,

Julie Tumamait-Stenslie
Julie Tumamait-Stenslie

Senate Rules Committee

APR 23 2008

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APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR GIL CEDILLO

SENATOR ROBERT DUTTON

SENATOR ALEX PADILLA

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Appointments Consultant

BILL BAILEY, Consultant to SENATOR BATTIN

DAN SAVAGE, Consultant to SENATOR CEDILLO

CHRIS BURNS, Consultant to SENATOR DUTTON

BILL MABIE, Consultant to SENATOR PADILLA

ALSO PRESENT

ANGELA M. BRADSTREET, Chief
Division of Labor Standards Enforcement

JOYCE KENNARD, Associate Justice
California Supreme Court

DAN CURTIN
California Conference of Carpenters

ANGIE WEI
California Labor Federation, AFL-CIO

ALLEN DAVENPORT
SEIU

MARTI FISHER
California Chamber of Commerce

JAY HANSEN

State Building and Construction Trades Council

TIFFANY RYSTROM, Member

Public Employment Relations Board

ROBIN W. WESLEY, Member

Public Employment Relations Board

ROBERT A. JONES, Deputy Secretary

Labor and Workforce Development Agency

BOB ALVARADO, Executive Officer

Regional Council

Northern California Carpenters

ROGER D. MILLER

Southern California Labor/Management

Operating Engineers, Contract Compliance

L. TRACEE LORENS

Attorney at Law

REGINA BANKS

California Employment Lawyers Association

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--ooOoo--

CHAIRMAN PERATA: We have Justice Kennard here.
They already moved you up first, so please come forward.

You have to come, too, Angela.

Welcome.

JUSTICE KENNARD: Thank you, Mr. Chairman.

Mr. Chairman Perata, honorable Members of the
Senate Rules Committee, I have known --

CHAIRMAN PERATA: Can we have your name, please,
just for the record?

JUSTICE KENNARD: Naturally. Joyce Kennard.

CHAIRMAN PERATA: Common spelling.

JUSTICE KENNARD: K-e-n-n-a-r-d.

CHAIRMAN PERATA: Thank you.

JUSTICE KENNARD: I have known the Governor's
appointee for Labor Commissioner, Angela Bradstreet, for roughly
twenty years. At our first meeting, we established an immediate
rapport. Both of us had come to this country in our early
twenties, hoping to build a better life in this land of liberty
and opportunity. America did not disappoint.

During her 25-year tenure in the law firm of
Carroll, Burdick and McDonough, Angela specialized in employment
law, and for a number of years was the firm's managing partner.
She has been publicly recognized as one of the top 75 female
litigators in California, and as one of Northern California's
super lawyers.

While at the law firm, she was also very much in

1 demand as a mediator. Requests for Angela to mediate came not
2 only from attorneys representing employees but also from
3 attorneys representing employers, a fact that speaks well of
4 Angela's ability to be fair to both sides.

5 Since her appointment as Labor Commissioner in
6 June 2007, Angela has established herself as someone who is
7 passionately committed to carrying out the legislative mandate
8 of vigorously enforcing the labor laws in a manner that protects
9 workers from unscrupulous employers and safeguards the business
10 interests of those employers who do comply with the law.

11 Three years ago, Angela and I in a private
12 conversation reminisced about coming to America many, many years
13 ago, full of hope, full of dreams. We talked about our deep
14 love for this country that we formally adopted when we became
15 citizens.

16 Angela wistfully observed that one dream she
17 still had after more than two decades as an attorney in private
18 practice was to have a career in public service. I still
19 remember that radiant smile when she said that through public
20 service, she hoped to do her part in contributing to the greater
21 good, a way of expressing to America her gratitude for giving
22 her the opportunity to succeed.

23 My answer was, "Splendid idea."

24 [Laughter.]

25 JUSTICE KENNARD: Angela's substantial expertise
26 in employment law, combined with her proven commitment to
27 integrity and fairness, makes her a perfect fit for the job of
28 Labor Commissioner.

1 Thank you for so graciously and patiently hearing
2 me out.

3 CHAIRMAN PERATA: Thank you.

4 Ask for an Aye vote.

5 [Laughter.]

6 MS. BRADSTREET: Mr. Chairman and Members of the
7 Rules Committee, I will submit after that.

8 I just have to say that what an incredible honor
9 it is for Justice Kennard to be here today. She is one of the
10 most revered and respected jurists in the state and in the
11 nation, and has so much love and admiration by so many people,
12 including myself. And if I can learn some of the wonderful
13 attributes that she has in terms of her ability to be objective,
14 and fair, and compassionate, and call them as they see them, and
15 gutsy --

16 JUSTICE KENNARD: But this is your confirmation
17 hearing.

18 [Laughter.]

19 MS. BRADSTREET: Okay. She means everything.

20 If I may, Mr. Chairman, I would like to introduce
21 my family here today.

22 CHAIRMAN PERATA: Please.

23 MS. BRADSTREET: My inspiration and my domestic
24 partner, Tiffany Rystrom in the pink there. You're going to be
25 seeing her a little later.

26 And my extended family, my very closest friends
27 in the entire world who I've known also for some 20 years,
28 Shirley Nelson, and Barbara Schraeger, and Phil Plant. We've

1 shared many martinis together; I dread to think how many,
2 Mr. Chairman.

3 CHAIRMAN PERATA: This is great. No wonder
4 you're the Labor Commissioner.

5 [Laughter.]

6 MS. BRADSTREET: And also my former law partner,
7 Dana Beldiman is here, who is Counsel General for Romania, and
8 I've also known Dana for 20 years.

9 When I made a promise to myself upon becoming a
10 citizen of this great country that one day I would enter into
11 public service, I really could not have imagined a position for
12 which I feel I am better suited, or more passionate about.

13 If this Committee decides to confirm me, I pledge
14 to protect the rights of workers like Matilda Arenas, who I met
15 on a garment enforcement sweep in a garment factory in Los
16 Angeles. And she came up to me, and she pointed to my cuff.
17 And she said, "I get four cents for this." And she pointed to
18 my other cuff and she said, "I get four cents for this, and it
19 takes me 12 hours to earn \$50."

20 And I also pledge to preserve a level playing
21 field for all employers who comply with the labor laws, and to
22 prevent those employers who violate the laws from obtaining an
23 unfair competitive business advantage.

24 I intend to carry out my duties with the utmost
25 integrity at all times. That means calling them as I see them,
26 based on the applicable facts and the applicable law.

27 That also means giving everyone who has a matter
28 before the DLSE an opportunity to be heard and to receive a fair

1 shake. Employers and employees alike are entitled to expect
2 from me a balanced, fair, and well-reasoned approach which
3 comports with the Labor Commissioner's statutory mandate.

4 Thank you very much.

5 CHAIRMAN PERATA: Thank you.

6 When I first heard you speak, I thought you were
7 from Arkansas.

8 [Laughter.]

9 CHAIRMAN PERATA: We've been hearing a lot about
10 that lately.

11 Anyone present that would like to speak? I just
12 would suggest that she's probably in a safe harbor, so if you
13 have these long speeches, don't give them.

14 MR. CURTIN: Don't give them?

15 CHAIRMAN PERATA: Well advised, considering
16 you're the first one to come up here.

17 MR. CURTIN: Exactly.

18 Danny Curtin, California Conference of
19 Carpenters.

20 I really am pleased to be here, as I was last
21 week for the last nominee. I won't go there because I'm hoping
22 for --

23 CHAIRMAN PERATA: He didn't do so well.

24 [Laughter.]

25 MR. CURTIN -- expeditious output on this one.
26 But I reiterate the same things I said there.

27 This is a wonderful appointment, and it's a big
28 improvement. And we are very, very pleased about it. And it's

1 especially pleasing to see Justice Kennard, although the
2 accent's considerably different.

3 I'm looking forward to some martini somewhere at
4 some point, but not for this testimony.

5 Thank you very much.

6 [Laughter.]

7 CHAIRMAN PERATA: Can you hang in there for half
8 an hour until noon?

9 MS. WEI: Thank you, Mr. Chair and Members.
10 Angie Wei on behalf of the California Labor Federation.

11 Very pleased to support Ms. Bradstreet for Labor
12 Commissioner. Since she was appointed, she actively reached out
13 to the State Federation of Labor, as well as others in the labor
14 community, and created an open-door policy for us to
15 communicate with her on matters of interest to our members.
16 Since that time, we've brought a few issues to her attention,
17 and she's worked fiercely and expeditiously to resolve them on
18 behalf of our members.

19 So, we're very pleased that she's taken this
20 opportunity to join public service, and we look forward to a
21 productive relationship with her, to help give workers their due
22 justice and even the competitive playing field for employers.

23 Thank you very much.

24 MR. DAVENPORT: Senators, Allen Davenport with
25 Service Employees International Union.

26 The remarks that Angie Wei made reflect not only
27 our feeling at the top levels of my union, but at the level of
28 my union where the workers need the help. Those people, too,

1 like her a lot.

2 We recommend her highly.

3 CHAIRMAN PERATA: Thank you.

4 MS. FISHER: Marti Fisher, California Chamber of
5 Commerce.

6 We also strongly support the confirmation of
7 Angela Bradstreet as Labor Commissioner. She has, I have to
8 agree with Angie Wei, she has opened her door to our members as
9 well, and discussed matters that are important to us, and has
10 shown a very fair and balanced approach.

11 We would like to see her stay there.

12 CHAIRMAN PERATA: You might want to reconsider.
13 This is a public record.

14 [Laughter.]

15 MR. HANSEN: Mr. Chair and Members, Jay Hansen
16 with the State Building Trades Council, also here in support,
17 strong support.

18 We've been very pleased with her work to this
19 point. She's had a very accessible office and has been very
20 responsive to our needs. We appreciate the support that we hope
21 that she gets today.

22 CHAIRMAN PERATA: Thank you.

23 Anyone in opposition? Excellent.

24 Any questions?

25 SENATOR BATTIN: I do.

26 Ms. Bradstreet, one of the issues that I have had
27 come up to me several times this year, actually, is dealing with
28 the mandatory meal and rest period regulations that employers

1 have.

2 If I get this right, the employers must compel
3 their employees to cease work during the meal period, which
4 requires employers to police the workforce by watching the
5 clock. Employees may not voluntarily skip the meal period.
6 Employees may not take the meal period at another time.
7 Employees may not return early, leave late, or do any work
8 during the meal period. Noncompliant independent employee
9 action with regards to their meal period creates a liability for
10 their employers.

11 Now, I can understand the reason behind it. You
12 should have a break when you're at work.

13 But I had an interesting meeting with some
14 truckers, people in trucking companies. They found themselves
15 in a quandary. On one hand, they had to be under these
16 regulations, their employees, the drivers.

17 On the second hand, they were hauling gasoline
18 around, and the Homeland Security and Department of
19 Transportation says that you cannot leave your truck. If you
20 leave your truck, you're breaking federal law.

21 So, they have from a refinery, they have trucks
22 that are going all over the state. And they don't know how to
23 deal with the law because either they're violating the state law
24 or they're violating the federal law.

25 And it was going along okay, because what was
26 happening was, truckers were eating lunch in their truck, and
27 they didn't seem to mind that.

28 But then some enterprising trial attorneys jumped

1 in, and then started suing because they were under the private
2 Attorney General actions that we have in our state, were suing
3 the trucking companies. And then, when you start adding up
4 amount of employees, times days, times break, they're talking
5 millions and millions of dollars.

6 And they don't know what to do. I mean, they are
7 stuck. And that's just the truckers.

8 There's all sorts of other industries that have
9 unique situations if they break the law in the state to conform
10 with the federal law.

11 How do we deal with this?

12 MS. BRADSTREET: Senator, one of the things that
13 came out in the public forums that I held on meal breaks was a
14 need by both sides for more flexibility in this area, which
15 would probably have to be done by legislation.

16 You are exactly right. I listened to comments
17 from truckers saying, you know, right before the fifth hour,
18 they are compelled to pull over to the side of the road when it
19 may not be safe to do so.

20 I listened to comments from restaurant workers,
21 saying that right at the fifth hour, they have to go off and
22 take their breaks when their tips are the highest, and they're
23 losing money.

24 And so, the whole issue of flexibility came out
25 from both sides during the public forums.

26 And certainly, I think that the administration
27 would like to see some comprehensive legislative solution.

28 And there is also, as I'm sure you're aware, on

1 the issue of policing meal breaks, there is the Brinker decision
2 at the Court of Appeal, where oral arguments were heard two days
3 ago. And because there's been so much confusion in the --
4 between the statute and the wage orders and conflicts, I am on
5 record as urging the Court of Appeal in Brinker to clarify the
6 issue, the meaning of the term "provide" as to whether or not it
7 truly means that employers have to police meal breaks.

8 So, I think -- I think there needs to be either a
9 resolution by the courts or a resolution by the Legislature on
10 some of these issues.

11 SENATOR BATTIN: Thank you.

12 MS. BRADSTREET: Thank you, Senator.

13 SENATOR BATTIN: I'll move the confirmation.

14 CHAIRMAN PERATA: I would just add, and maybe I
15 shouldn't do this because it might cost you a couple of votes,
16 but I think the one and only time you and I appeared in public
17 together, you were giving an award to Diane Feinstein and I for
18 our work on assault weapons.

19 MS. BRADSTREET: Yes, sir. It was actually to
20 you. Diane presented it to you actually.

21 CHAIRMAN PERATA: You see, I don't remember much.

22 [Laughter.]

23 CHAIRMAN PERATA: But you were there though;
24 right?

25 MS. BRADSTREET: I was there, and I actually was
26 right there, yes.

27 CHAIRMAN PERATA: I got that much right.

28 But your work and reputation certainly preceded

1 you to this appointment.

2 What everyone has said, what was exhibited here
3 this morning, is that your sense of fairness and justice are
4 impeccable, unquestionable. And in the position that you're in,
5 I don't think you could ask for anything more.

6 And I realized as you were talking, Madame
7 Justice, I haven't heard you speak before. It's a delightful
8 accent.

9 JUSTICE KENNARD: Thank you. Flattery will get
10 you just about everywhere, Mr. Chairman.

11 [Laughter.]

12 CHAIRMAN PERATA: Well, it hasn't gotten me far,
13 but it hasn't stopped me from trying.

14 I'm delighted. I'm delighted you're doing this.
15 To have somebody of your character, and experience, and talent
16 serving the State of California speaks well for everyone.

17 MS. BRADSTREET: Thank you very much, Senator.

18 CHAIRMAN PERATA: Please call the roll.

19 SECRETARY WEBB: Cedillo.

20 SENATOR CEDILLO: Aye.

21 SECRETARY WEBB: Cedillo Aye. Dutton.

22 SENATOR DUTTON: Aye.

23 SECRETARY WEBB: Dutton Aye. Padilla.

24 SENATOR PADILLA: Aye.

25 SECRETARY WEBB: Padilla Aye. Battin.

26 SENATOR BATTIN: Aye.

27 SECRETARY WEBB: Battin Aye. Perata.

28 CHAIRMAN PERATA: Aye.

1 SECRETARY WEBB: Perata Aye. Five to zero.

2 CHAIRMAN PERATA: Five-zero, congratulations.

3 MS. BRADSTREET: Thank you very much.

4 If I may, I just want to acknowledge all of my
5 staff, without whom I wouldn't be here. My chief counsel, Bob
6 Roginson, and my deputy, chief deputy, Denise Padres is here and
7 all of my staff who made this possible.

8 CHAIRMAN PERATA: Without you, they wouldn't be
9 here. It's symbiotic.

10 I'd like for a moment to ask the Legislative of
11 Counsel to come up.

12 [Thereupon the Committee
13 acted on legislative items.]

14 CHAIRMAN PERATA: I am going to take C and D,
15 Tiffany Rystrom and Robin Wesley out of order because
16 Ms. Bradstreet mentioned martinis, and I don't want to stand
17 before you and the martinis.

18 [Laughter.]

19 CHAIRMAN PERATA: Would you both like to come up,
20 please. It's the Public Employment Relations Board.

21 I expect after you're finished, we will lose half
22 the dais.

23 Ms. Rystrom, proceed.

24 MS. RYSTROM: Thank you, Senator.

25 Chairman Perata and Members of the Rules
26 Committee, it is an honor to be here.

27 If this Committee decides to confirm me, I
28 believe that I will continue to add value to PERB based on my 30

1 years of legal experience as an appellate lawyer and an
2 employment litigator.

3 From this background, I know first-hand the need
4 for fair and impartial review of the evidence, as well as a
5 well-reasoned application of the law. This is what I have
6 strived to do at PERB, and I think the decisions I have authored
7 reflect these goals.

8 As a former judicial clerk and a -- with the
9 First District Court of Appeal, and trial lawyer, I also
10 recognize the need for timely decisions. One of my top
11 priorities is to be current in my caseload, and I am closing in
12 on that goal.

13 A benefit I contribute to the board is that I
14 bring no preconceived notions to the adjudication task of a PERB
15 member. I look at the language in great detail when I interpret
16 the statutes and apply the law to see what is exactly said. For
17 institutional knowledge, I am extremely fortunate to be
18 surrounded by very knowledgeable staff who have always been
19 willing to take the time to share their very valuable knowledge
20 with me.

21 I truly appreciate PERB's mission and the
22 importance of fair, well-reasoned decisions. And I thank you
23 very much for your consideration.

24 CHAIRMAN PERATA: Thank you.

25 MS. WESLEY: Good morning, Chairman Perata and
26 Members of the Senate Rules Committee.

27 My name is Robin Wesley, and I thank you for the
28 opportunity to appear before you today.

1 As you know, PERB is charged with administering
2 seven collective bargaining statutes, covering approximately 2
3 million public employees, and 7,000 public employers. It is
4 PERB's job to resolve bargaining disputes arising between these
5 parties.

6 I am tremendously honored to be the first staff
7 person appointed to the board in PERB's 32-year history. Over
8 my 17 years at PERB, I have served in every position in the
9 agency: as a legal advisor; regional attorney; acting general
10 counsel; and administrative law judge.

11 As the first staff appointee, I am humbled to
12 represent a very dedicated, hard working staff who are truly
13 committed to PERB's mission of ensuring the benefits of
14 collective bargaining and promoting harmonious labor relations.

15 I believe my experience of working directly with
16 PERB's constituents, investigating their unfair practice charges
17 and mediating their disputes, enhances my work as a board
18 member.

19 CHAIRMAN PERATA: Thank you. I have one
20 question.

21 The Governor's proposing to close the Oakland
22 regional office in his budget. I'm just wondering, people then
23 will have to come to Sacramento?

24 MS. WESLEY: Yes. Well, yes, if the Oakland
25 office is closed, there will probably be more travel
26 requirements for the parties to come to PERB.

27 We conduct settlement conferences, and we also
28 conduct the formal hearings. We haven't worked out the details

1 yet. There may be possibilities other office space where we can
2 meet the parties, but we haven't resolved that yet.

3 CHAIRMAN PERATA: But you are looking at perhaps
4 how to mitigate that?

5 MS. WESLEY: Absolutely.

6 CHAIRMAN PERATA: Any questions of the dais?

7 Anyone here that would like to speak in support
8 of either or both? Better do both. It's kind of hard to just
9 do one.

10 MR. DAVENPORT: Good morning. Allen Davenport
11 with the Service Employees International Union.

12 We represent over half a million members who have
13 their working life organized under laws that are administered by
14 the PERB, and we find both of these candidates well qualified
15 and commend them to you.

16 CHAIRMAN PERATA: Thank you.

17 Anyone else? Anybody in opposition?

18 SENATOR BATTIN: Move the appointment.

19 CHAIRMAN PERATA: Family, do you have any family
20 here that either of you would like to introduce?

21 MS. RYSTROM: I would like very much to introduce
22 my family that is here.

23 I have my sister Julie Jordon and her husband
24 Nick. I have my little brother Josh Rystrom. Will you stand,
25 please, little brother?

26 CHAIRMAN PERATA: Still pushing you around.

27 [Laughter.]

28 MS. RYSTROM: And his wife Linda Rystrom.

1 I have my dear, long-time friends, retired Judge
2 Judy Whitmer, and I have my extended family whom Angela
3 introduced, except I think I pulled in a little more for me now.
4 Also Steve Nelson, Shirley Nelson's son, and then the wonderful
5 PERB family. The support is there.

6 SENATOR BATTIN: The whole audience.

7 [Laughter.]

8 CHAIRMAN PERATA: Did all of you know that there
9 were going to be martinis afterwards?

10 [Laughter.]

11 CHAIRMAN PERATA: This is just a coincidence, I
12 suppose.

13 MS. WESLEY: Senator, if I may, I'd like to
14 introduce my husband, William Wesley is here today to support
15 me.

16 CHAIRMAN PERATA: Welcome.

17 We have a motion to approve. Please call the
18 roll for both.

19 SECRETARY WEBB: Cedillo.

20 SENATOR CEDILLO: Aye.

21 SECRETARY WEBB: Cedillo Aye. Dutton.

22 SENATOR DUTTON: Aye.

23 SECRETARY WEBB: Dutton Aye. Padilla.

24 SENATOR PADILLA: Aye.

25 SECRETARY WEBB: Padilla Aye. Battin.

26 SENATOR BATTIN: Aye.

27 SECRETARY WEBB: Battin Aye. Perata.

28 CHAIRMAN PERATA: Aye.

1 SECRETARY WEBB: Perata Aye. Five to zero.

2 CHAIRMAN PERATA: Five-zero, congratulations to
3 you both.

4 We're going to do reference of bills.

5 [Thereupon the Committee

6 acted on legislative items.]

7 CHAIRMAN PERATA: Our final appointee is Robert
8 Jones, Deputy Secretary, Labor and Workforce Development Agency.
9 Welcome.

10 MR. JONES: Thank you.

11 Good morning, Mr. Chairman and Committee
12 Members. It's an honor for me to be here today before you.

13 The first thing I'd like to do is introduce some
14 of my family. In the audience is my wife Donna, my -- our
15 daughter Caper with her husband Chris. There's two of our six
16 grandchildren. Leia and Jack. The woman that's just sitting
17 down is my daughter -- is our daughter Jessica and a portion or
18 two-thirds of our soon-to-be number seven.

19 Also here today out in the hall, because I think
20 their attention span is a little shorter than mine, is our son
21 Jason and our grandson Milo, and Jessica's husband Colin, and
22 our granddaughter Josephine, whom I think you have heard from
23 earlier.

24 We just had last Friday, our daughter Diedre and
25 her husband couldn't be here because we just had another
26 granddaughter Friday, Haley. And I have some photos if anyone's
27 interested.

28 I'm eager to answer your questions, but first I'd

1 like to briefly tell you something about myself and how I arrive
2 before you here today.

3 The vast majority of my life has been devoted to
4 the representation of working people. This undoubtedly arises
5 out of my life experience, starting at age 14, when I worked
6 10-hour graveyard shift one night a week as a printer's devil in
7 a newspaper printing plant in Southern California. That was a
8 great introduction to what it meant to work, and since then I've
9 held many jobs. I wrote down just a few quickly: dishwasher,
10 cook, cafeteria manager, school bus driver, park ranger at the
11 Grand Canyon, firefighter, Teamsters' business agent. I was
12 also -- I also taught labor and business law for four years
13 full-time for the University of Maryland.

14 As a lawyer in private practice, I represented
15 unions and individual workers, and I also represented small to
16 medium businesses. This continued throughout my career until
17 the time that I accepted the job with DLSE.

18 In early 2005, I met Labor Commissioner Donna
19 Dell, and I told her I'd like to work for her at DLSE. I was
20 offered and eagerly accepted the position of chief counsel
21 beginning in August of 2005. I entered state service because I
22 wanted to make sure all workers in California are protected, and
23 that businesses that comply with the law aren't put at a
24 competitive disadvantage by those that ignore labor laws and
25 exploit vulnerable workers.

26 As Deputy Secretary of Policy Enforcement at the
27 Labor and Workforce Development Agency, I'm working hard with
28 partners to crack down on the underground economy through the

1 activities of the Economic and Employment Enforcement Coalition.
2 I participated often in regular field enforcement actions. Just
3 last week, I oversaw an enforcement sweep of illegal pallet
4 manufacturing operations in Southern California. We found
5 deplorable and dangerous working conditions and cited employers
6 who were ignoring minimum wage, overtime, and worker safety
7 laws.

8 The Triple-EC has seen great success since its
9 inception three years ago. Our careful targeting of low-wage
10 industries results in at least three citations or penalties
11 assessed for every business inspected. That means we're doing a
12 good job of identifying the bad actors out there and taking
13 action. We are also focusing on education, reaching out to both
14 employees and employers in our targeted areas of enforcement in
15 an effort to gain compliance.

16 I can't say enough about the dedicated employees
17 and managers I've been privileged to work with from these many
18 agencies that make up the Triple-EC. These include: the DLSE,
19 Cal-OSHA, EDD, Contractors' State License Board, U.S. Department
20 of Labor, the Bureau of Automotive Repair, the Alcoholic
21 Beverage Control Board, and many district attorney offices
22 throughout the state who work with us in prosecuting serious
23 offenders. They are truly an outstanding group of enforcement
24 employees.

25 We've come a long way in a relatively short
26 period of time, and we still have a long way to go. I'm looking
27 forward to continuing on that path.

28 With that introduction, I'm happy to answer any

1 questions you may have.

2 CHAIRMAN PERATA: Thank you.

3 Any questions from the dais?

4 Anyone in the audience in support of the nominee
5 may come forward, please.

6 MR. HANSEN: Mr. Chair and Members, Jay Hansen,
7 with the State Building and Construction Trades Council.

8 We're here to strongly support Bob Jones for this
9 appointment. He's been an honest and straight-forward person in
10 his position with us, in a very critical position. He's been
11 accessible to the Building Trades and our many, many affiliates.

12 We also believe he's done a lot to help us
13 protect our members, to level the construction playing field.
14 That's something that's critically important to us, and we think
15 we have an honest player here who's been honest with us and
16 straight-forward. That's what we look for in this position.

17 We think he's well suited and well qualified, and
18 we strongly support his appointment today.

19 CHAIRMAN PERATA: Thank you.

20 MR. DAVENPORT: Allen Davenport with the Service
21 Employees International Union.

22 We also are here to support Bob Jones. We've had
23 a chance to work with him over the last year, and we've had a
24 chance to talk to him about matters of some controversy
25 within -- that have come under his consideration. And we find
26 him, once again, to be a straight-shooter, to be a person who
27 knows the law well, and does his level best to administer it in
28 the way that we would all want it to be respected.

1 So, we commend him to you without reservation.

2 CHAIRMAN PERATA: Thank you.

3 Anyone else? Anybody in opposition?

4 MR. CURTIN: Mr. Chairman, Members of the
5 Committee, I rise in opposition, or I come up here in
6 opposition. I'm actually seated.

7 Danny Curtin, California Conference of
8 Carpenters.

9 This is the first time in over 20 years of being
10 active in the Capitol politically that I've found myself in
11 opposition to an appointee.

12 I do believe the Governor generally has the right
13 to appoint anybody he chooses, but in this case I do have an
14 obligation to my members as well and all of the carpenters. I
15 think this is the wrong person in the wrong job.

16 It's going to take few minutes, if you'll bear
17 with me, to sort of lay out why I believe that. But in my
18 letter which you've seen, Bob Jones was appointed to the chief
19 counsel at the DLSE in a period of extreme controversy. For
20 about a year-and-a-half, the agency -- or the division and, I
21 believe, the agency and the Department of Industrial Relations
22 were making an effort to change the way the division interpreted
23 and enforced a basic labor law. And there was a difference of
24 opinion on that, and I grant that.

25 I'm not here to argue that the administration
26 doesn't have the right to push different policies. It's how
27 that was done that I am really bringing exception to. So, let
28 me go briefly through the process, and then -- well, I'll go

1 through the history for a minute and then talk more about the
2 appointment.

3 It was the meal and rest period problem. It had
4 to do with enforcement, whether it was a one-year statute of
5 limitation or a three-year statute of limitations.

6 When the bill was originally passed 2001, the
7 administration in power, or the DLSE, the people there decided
8 that it was a three-year statute. They based it on the law at
9 the time.

10 A new administration came in and had a difference
11 of opinion. The problem is, they went about it in the wrong
12 way.

13 The first thing they did was basically to put all
14 the meal and rest period cases on abeyance so they could decide
15 what to do with them, but they wouldn't hear them, and they
16 wouldn't deal with them for -- until they decided. The courts
17 found that to be inappropriate; that was unlawful. They found
18 that that abeyance order was an illegal underground regulation
19 that had circumvented the Office of Administrative Law.

20 Okay, after that, or in that process, they also
21 tried to institute an emergency regulation around Christmas in
22 2004. The first attempt was a little earlier. The outcry was
23 so enormous politically speaking and in the press that they
24 withdrew their own emergency regulation about two weeks after
25 they submitted it.

26 In January of 2005, they started doing the more
27 normal regulatory process to change the interpretation of this
28 statute. They followed that procedure pretty diligently for the

1 appropriate period of time, and one day before they -- let me
2 see here -- the regulation was quietly withdrawn one day before
3 the one-year adoption requirement. So, they withdrew their own
4 regulations because they were having trouble formulating them.

5 During that period of time, the administration
6 developed what I call a fake video news release. They developed
7 a news release, or something in the format of a news release
8 talking about their changes of policy and encouraging people to
9 use that as an actual news release. That was also happening in
10 Washington. There was an outcry in Washington; there was an
11 outcry here.

12 The court again stepped in. Trial court found
13 the agency and the DLSE guilty of making illegal and
14 unauthorized expenditures of thousands of dollars and ordered
15 them to stop. At that point, they took a more typical
16 regulatory procedure or administrative procedure in June of 2005
17 and issued a precedential decision, changing the statute of
18 limitations from three to one year. That position was
19 eventually overturned on the merits of the case, on the merits
20 of the issue, quite a bit later by the Supreme Court in a
21 seven-to-nothing decision.

22 And I want to point out that the Supreme Court in
23 that decision said that the DLSE acknowledged that the issue had
24 become politicized and basically said, when you politicize an
25 issue, and when an agency reverses itself 180 degrees from their
26 original position, that no longer has any deference to the
27 court -- the court owes that new position no deference. And
28 they struck it down seven-to-nothing.

1 At the same time, in another sort of wing of the
2 same case, in the Corrales decision, the precedential decision
3 was held to be illegal in that it violated the Administrative
4 Procedures Act, and the DLSE really had no authority to issue
5 precedential decisions at all. So administratively, they pretty
6 much messed that up.

7 So, the court intervened four times to tell them
8 they were wrong. They withdrew their own actions twice because
9 they were pretty clear they were wrong, or I don't believe they
10 would have withdrawn them. And that was the tone of the
11 situation when Bob Jones was appointed or hired.

12 We were really hoping that somebody might come in
13 and sort of settle things down and start a dialogue about just
14 how do we go about doing this.

15 By the way, during that process, the counsel,
16 chief counsel prior to Bob Jones, was telling the department
17 that the appropriate way to change that definition or that
18 interpretation was either through statute through the
19 Legislature or through the Industrial Welfare Commission. Those
20 were the only statutory options available. And they ignored
21 that, obviously.

22 So, as I said, we were hoping Mr. Jones would --
23 would change the debate internally and bring some reason to it.
24 Amazingly, having not been in the department, Mr. Jones walked
25 in and, the second week on the job, issued a broad gag order on
26 all of the attorneys in the division, basically saying -- and
27 I'll read just portions of it.

28 First saying, I appreciate your willingness to

1 make public appearances on behalf of the DLSE and how important
2 it is:

3 "However, based upon a number of
4 current operational and legal
5 considerations, including urging [sic]
6 litigation involving the DLSE
7 policies ..."

8 urgent, I'm sorry,

9 "... ongoing litigation involving
10 DLSE policies, I have determined
11 that until further notice,
12 attorneys will not be making any
13 public speaking appearances."

14 Well, to put it mildly, that was a bit
15 controversial, perhaps precedential, even though they don't
16 issue those any more. I don't believe there was ever a blanket
17 gag order on attorneys in any division in the state prior to or
18 post. And as a consequence, there was some response. People
19 didn't really take kindly to it.

20 Not too long after that, two weeks later, the
21 Labor Commissioner and the new chief counsel basically put the
22 foremost -- the senior attorney in the division on
23 administrative leave. The ostensible reason was because of his
24 appearance as a panelist at the Bar Association of San Francisco
25 barrister meeting. That appearance was in July, prior to the
26 gag order.

27 These timing things are important because I want
28 to get to something in a few minutes.

1 Mr. Jones followed that up with another notice to
2 Miles Locker, who is here, and who was put on administrative
3 leave with a pretty serious set of demands: that he speak to no
4 one involved in any adverse relationship, no lawyers or any such
5 thing, which also on the face of it seemed to be a little odd.
6 I'll get back to that in a minute.

7 A couple of attorneys in the department felt that
8 this was really an unnecessary and overly broad approach, and
9 they raised the issue. And they were told that they could not
10 speak on their private time, privately anywhere, on any issue
11 that the DLSE might have some activity in, either legislative --
12 I suppose legally speaking.

13 I'll just read a couple of comments that were
14 sent to me of e-mails. This is from a woman named Rachel
15 Folberg, who was an attorney at the department and has since
16 left.

17 "I have reluctantly concluded
18 that because of the threats of
19 discipline against me if I should
20 speak at the CELA employment law
21 seminar and the grave economic
22 and personal impact that such
23 discipline would have on me, I
24 have no other choice but to not
25 appear at the CELA seminar."

26 Earlier Mr. Jones had sent in an e-mail saying:

27 "You still certainly are free to
28 attend the conference as an

1 individual, but you may not
2 appear as a speaker ... As
3 attorneys for this Division we
4 have certain ethical and other
5 duties to our employer in
6 communicating to the public
7 information that is within the
8 jurisdiction of our office. So
9 there is no misunderstanding,
10 this policy is one that I would
11 not have issued were I not fully
12 prepared to enforce it in a
13 consistent manner. As you are
14 already aware, failure to follow
15 this policy will be viewed as
16 insubordination and will result
17 in discipline that is appropriate
18 given the specifics of your ...
19 conduct."

20 Rachel Folberg, and I will read her testimony --
21 her letter in a minute, saw Mr. Locker, a 20-year employee with
22 an impeccable record, being escorted out of the building two
23 weeks earlier, carrying a few of his belongings and being
24 escorted by an enforcement officer. So yes, she was intimidated
25 into not speaking.

26 So, Rachel Folberg and another attorney went to
27 the ACLU. The ACLU proceeded to write letters to Mr. Jones. The
28 first one is a five-page primer on the right of free speech,

1 essentially, particularly for public employees. It talks about
2 the balancing necessary. They call it the Pickering Balance
3 Test. It cites the appropriate laws, and so on and so forth.

4 Mr. Jones responds that he didn't really agree
5 with her analysis, but does request that the ACLU:

6 "... provide us with suggestions
7 on what a more narrowly tailored
8 policy might contain, especially
9 taking into account that it is
10 intended only for attorneys who
11 represent the Labor Commissioner
12 and are identified as such in
13 public announcements."

14 The ACLU response two days later, and this all
15 started in October of 2005:

16 "... we are unable to comply
17 with your request that we draft
18 an acceptable policy to limit
19 your employees from speaking on
20 matters of public concern. As a
21 matter of principle and practice,
22 the [ACLU] does not offer
23 constructions of policies or
24 rules that would limit expression
25 under the First Amendment. Even
26 more important in this case, we
27 do not believe that either your
28 agency or your employees are best

1 served by a policy that limits
2 speech as a prior restraint."

3 She also notes in her letter that this statement
4 seems inconsistent.

5 "Your request ... seems
6 inconsistent with the experience
7 of our clients, Rachel Folberg
8 and Anne Hipshman, who were
9 prohibited from speaking on
10 settled matters of law at a
11 California Employment Lawyers
12 Association conference despite
13 the absence of any information
14 identifying them as DLSE
15 attorneys on the agenda."

16 It wasn't narrowly constructed.

17 Another letter a couple of days later, once
18 again, another primer on the First Amendment:

19 "The loss of First Amendment
20 [rights] for even minimal periods
21 of time unquestionably constitutes
22 irreparable damage we do not
23 believe that any solution short of
24 a complete recission of the policy
25 will satisfy your constitutional
26 obligations"

27 This is an ongoing dialogue with the chief
28 counsel of the department of the DLSE, and at the time the

1 acting Director of the Department of Labor Standards
2 Enforcement.

3 November 3rd, from the ACLU:

4 "...we are concerned the memo
5 you issued to DLSE staff
6 attorneys on October 31 is so
7 ambiguous as to employees' rights
8 and responsibilities with respect
9 to unofficial speaking engagements
10 as to create a policy that is
11 unconstitutionally vague under
12 both the First Amendment and the
13 Due Process Clause of the
14 Fourteenth Amendment"

15 See Cohen versus Such-and-such.

16 "In addition, disapproval by the
17 Labor Commissioner of any request
18 for an official DLSE speaker
19 shall not preclude individual DLSE
20 attorneys from making such
21 appearances in their personal
22 capacities As is clear from
23 our correspondence, the First
24 Amendment compels this
25 interpretation"

26 Okay.

27 Next letter, November 14th, from Mr. Jones:

28 "I'm having some trouble in

1 understanding the precise nature
2 of your concern with the actions
3 I have taken in response to your
4 clients' request that I rescind
5 the temporary policy on public
6 speaking engagements set forth in
7 my August 10 memorandum"

8 Clearly not getting the message.

9 Once again, the ACLU, middle of November:

10 "We believe your memorandum dated
11 October 1 could reasonably be
12 read by your employees to require
13 prior permission from the Labor
14 Commissioner for speaking
15 engagements DLSE attorneys would
16 like to undertake on their own
17 time, in their personal capacities
18 ... overbroad prior restraint and
19 violate the First Amendment to the
20 U.S. Constitution. See United
21 States v. National Treasury"

22 So on and so forth,

23 "It is for these reasons that we
24 requested that you clarify in
25 writing both to us and to all
26 DLSE staff attorneys that they
27 need not seek or obtain
28 permission to speak in their

1 personal capacities on their own
2 time regarding matters that cover
3 the policies and procedures of the
4 Labor Commissioner."

5 December 22nd, I'm not sure what's engaged in the
6 meantime, but the ACLU write another letter saying:

7 "On October 31st you distributed a
8 memo to all DLSE staff attorneys
9 rescinding the August 10th policy,"

10 that part's good,

11 "However, this memo also stated
12 that 'all outside requests for
13 speaking appearances by DLSE
14 attorneys should be forwarded to
15 the Labor Commissioner, through me,
16 for review.' Given the DLSE's
17 adverse employment action against
18 a staff attorney who spoke on his
19 own time and in his individual
20 capacity prior to ... August 10
21 ... we believed your October 31
22 memo was likely to create the
23 impression that staff attorneys
24 were required to seek and obtain
25 permission to speak on any matter
26 related ... even in their own
27 capacity. Because you have treated
28 Ms. Hipshman's and Ms. Folberg's

1 intended speaking engagement as
2 one which did not require prior
3 review or approval, we assume
4 that DLSE's current policy
5 requiring prior approval of
6 speaking requests applies only to
7 speaking engagements which are
8 intended to be made by staff
9 employees as representatives of
10 the DLSE, and not to speaking
11 engagements by DLSE staff ..."

12 This is legalese. It gets complicated,

13 "... DLSE staff attorneys on ...
14 own time and in their personal
15 capacities"

16 We assume that's the new policy.

17 "If I do not hear from you by
18 December 30 ... I will consider
19 this matter resolved."

20 Well, voila, we get a press release from the ACLU
21 January 26, 2006:

22 "State labor lawyers speak at
23 first public event since gag
24 order was lifted."

25 January 26, 2006, the two attorneys that brought
26 the case went and spoke, and nothing occurred. Now, the
27 assumption is that the policy changed, and I think that's a good
28 thing. The thought that it took three months to negotiate the

1 First Amendment rights of DLSE attorneys was not a good thing.

2 But unfortunately, particularly unfortunately for
3 Mr. Miles [sic], the staff attorney who was on administrative
4 leave, four days after the ACLU's press release saying the staff
5 attorneys can speak in public on their own time, Mr. Jones
6 issues a Notice of Adverse Action, basically firing -- now
7 firing Miles Locker. Mr. Jones is now not just chief counsel,
8 but also chief counsel to the acting director of the DLSE, which
9 is himself, the Labor Commissioner.

10 In that Notice of Adverse Action, Mr. Locker is
11 being accused of speaking not once but twice on his own time to
12 in one case the Teamsters, and to another case another Bar
13 Association meeting. And he's now being told that's improper,
14 and he's being fired for that. Two of ten charges have to do
15 with the right of speaking. And I want to be blunt about this,
16 I believe that's what the nature of this problem is all about.

17 In that document, Mr. Jones writes, and don't
18 forget, this is four days after all of this has supposedly been
19 resolved, he says to Mr. Locker:

20 "However, Mr. Locker's going to
21 be here in his unofficial capacity."

22 He's made that clear. Mr. Jones says:

23 "It was ethically impossible for
24 you to appear in some capacity
25 other than as an attorney for the
26 Labor Commissioner on an issue
27 subject to the DLSE enforcement."

28 Now I presume Mr. Jones believes that or he

1 wouldn't have written it. Unfortunately, the ACLU believes
2 that he had -- they had an agreement that DLSE attorneys could
3 speak in their private capacity.

4 This is what's the cause of this Adverse
5 Action. Let me go to the Adverse Action because that's also
6 very critical. I'm going to start with Rachel Folberg's letter,
7 which you may have all seen. She was an attorney at the DLSE.
8 She's the one who brought suit to the ACLU. She says:

9 "Two weeks after gag order was
10 issued, Jones was responsible for
11 the suspension of Miles Locker,
12 former chief counsel of the DLSE.
13 Mr. Locker was very publicly
14 escorted out of the DLSE's
15 offices by a public safety
16 officer in the middle of the
17 workday ..."

18 Let me get these clips off here,

19 "... in front of attorneys and
20 staff that he formerly supervised.
21 It seemed clear that the
22 humiliating and very public way
23 Locker was suspended was meant to
24 send a message to other attorneys
25 and staff: tow the line or suffer
26 the consequences. The suspension
27 of Miles Lockyer had a chilling
28 effect on the work and morale of

1 attorneys and staff at DLSE.
2 Some staff at the district offices
3 that I advised also expressed
4 concerns that ... they might
5 suffer consequences for doing the
6 same work in the same way that it
7 had been done before.

8 "After Locker was terminated,
9 there was a sense that politics
10 took precedence over getting the
11 work of DLSE done. It ... became
12 obvious that tremendous resources
13 were going into the Locker
14 prosecution. Other attorneys
15 were worried whether advice we
16 gave or briefs we wrote might now
17 be considered as a basis for
18 discipline. The real work of the
19 agency suffered as is reflected
20 in the statistics from 2005 and
21 2006. There was no guidance in
22 how we collectively would ...
23 further the goals"

24 Okay, I'll move to the next thing:

25 "In May 2006, I was denied
26 the opportunity to interview for
27 a promotional position within the
28 agency. Shortly thereafter,

1 Jones denied my request for leave
2 to attend to the health issue of
3 one of my young children. This
4 denial came from Jones despite a
5 provision in my Memorandum of
6 Understanding ... that would have
7 allowed him to provide the leave
8 and despite the support of my
9 immediate supervisor. At that
10 point it seemed that resignation
11 was the only viable option"

12 When Rachel started this letter, she was
13 obviously in opposition to this appointment to the
14 Undersecretary for Enforcement, Mr. Jones. She said:

15 "I am sending this letter
16 with some reluctance based on my
17 concern that speaking out will
18 likely invite retribution if I
19 were to reapply for my former
20 position at DLSE at some time in
21 the near future."

22 Rachel did not want to attend this -- this
23 particular meeting. She felt uncomfortable, and I feel
24 uncomfortable, to be quite blunt about it.

25 I have another thing I must read to you, which is
26 the sworn testimony from Anne Stevason, who was chief counsel at
27 the time for the Division of Labor Standards Enforcement prior
28 to Bob Jones. She is now, by the way -- she left her job at the

1 DLSE. She is now Chairperson of the New York State Industrial
2 Appeals Board. She was confirmed by the New York Senate, and
3 she is in charge of all the ALJs in New York State.

4 In the testimony regarding the Locker case, she's
5 asked the question,

6 "The Amended Notice of Adverse
7 Action against Mr. Locker seeks to
8 discipline him for conduct occurring
9 between December 2004 and July 2005."

10 Mr. Jones is bringing this Adverse Action

11 "Q. Did you participate? Is that
12 correct?

13 A. Yes, that's correct.

14 Q. Did you participate in the
15 disciplinary investigation of Mr.
16 Locker?

17 A. No."

18 She was chief counsel at the time.

19 "Q. Did you have any involvement in the
20 investigation?

21 A. No.

22 Q. Were you interviewed by anyone in
23 connection with the investigation?

24 A. Yes.

25 Q. And by whom?

26 A. By Mr. Jones and Mr. Mischel."

27 Another attorney in the DLSE.

28 "Q. Were you consulted regarding the

1 decision to discipline Mr. Locker?

2 A. No.

3 Q. Even though you were his
4 supervisor during the relevant time
5 period?

6 A. That's correct.

7 Q. Did you share your -- did you
8 offer your opinion on whether
9 Mr. Locker should be disciplined?

10 A. Yes."

11 She was his supervisor through this entire period. I want you
12 to understand this. She was chief counsel.

13 "Q. And what did you say and to whom?

14 A. I can't remember the exact words,
15 but I did have a conversation with
16 Mr. Jones in which I thought I told him
17 that I thought it was inappropriate,
18 that I thought that it was hurting the
19 morale of the division, that Miles was a
20 very valuable member of the Legal
21 Section, and I think I may have even --
22 I said something to the effect that I
23 knew it wasn't his decision ..."

24 Meaning Mr. Jones,

25 "... because how could it be since he
26 had just started. And I asked him to
27 reverse it."

28 Now, he was there one month when he put Mr. Locker on

1 administrative leave. No history to the agency at all. Locker
2 there 20 years.

3 "Q. You mentioned that you said you
4 thought it was inappropriate. Why did
5 you think it was inappropriate?

6 A. Well, because I was Miles'
7 supervisor for that whole time, and I
8 never found any reason to discipline
9 him. On the contrary, I thought he was
10 invaluable to the division. He worked
11 incredible hours. He was the first
12 source anybody would go to as far as
13 information or knowledge or analysis,
14 and a lot of people in the division
15 relied on him. And he was always ready,
16 willing to answer questions both from
17 within the division and from the
18 public. I know the public held him in
19 very high regard. He gave a lot of
20 speeches, was asked back on a continuous
21 basis, and always was available to the
22 public and to DLSE inside to answer
23 questions.

24 Q. You also indicated one of the
25 things you said to Mr. Jones was that
26 you thought the discipline of Mr. Locker
27 hurt morale. Can you elaborate on that
28 a little bit?

1 A. Well, Miles was held in -- is held
2 in high regard by the other attorneys in
3 the division. He mentored some of the
4 attorneys. He hired some of the
5 attorneys. As I said, he was always
6 there for anyone who had questions or
7 who needed his input on legal issues,
8 and to see him get disciplined was --
9 I think outrage was the reaction by
10 most us.

11 Also questioning the motives as to
12 why he was being disciplined, the fact
13 that he was a civil servant of many,
14 many years and that this was happening
15 to him had a very chilling effect on
16 everybody else as to the way they
17 practiced, and I think it was mostly
18 the injustice of it that hurt morale."

19 This is the Chief of the New York State Industrial Appeals
20 Board making that comment.

21 I must make a comment on this letter. The people
22 who signed this letter are not here. The person who prepared
23 the letter, it's a variety of -- it's 14 different attorneys
24 from the civil justice area in the Bay Area primarily. It was
25 prepared for, but amended by all of them, by a woman named Donna
26 Ryu.

27 Donna Ryu is the -- is a professor and a lawyer
28 at the U.C. Hastings Civil Justice Clinic. Donna Ryu is also

1 voted by the California Lawyer as the 2008 Justice of the -- I
2 mean, I'm sorry, Attorney of the Year in Employment Law, not an
3 insubstantial honor for her.

4 The case that she was honored for was the Murphy
5 case in which the DLSE lost the case seven-to-nothing. It's
6 very complicated because they changed in the middle, and it's
7 partly why Miles was in the middle of the difficulty that he was
8 in.

9 The people who signed come from the U.C. Hastings
10 Civil Justice, from Stanford Community Law Clinic. There's an
11 individual, Suzanne Murphy, Esquire. They're all lawyers:
12 Marci Seville, Esquire, Professor, Director, Women's Employment
13 Rights Clinic, Golden Gate University; Margarita Prado Alvarez,
14 Alexander Community Law Center, Santa Clara University; Rachel
15 Folberg again; Matthew Goldberg, Staff Attorney, Legal Aid
16 Society, Employment Law Center; Hillary Ronen, Staff Attorney,
17 La Raza Centro Legal; Professor Hina Shah, Women's Employment
18 Rights Clinic, and so on. There's 14 of them.

19 CHAIRMAN PERATA: Excuse me. How much longer?
20 Her fingers are going to fall off.

21 MR. CURTIN: I'll quicken it up. Not long.

22 They write in opposition, to make it clear. I
23 won't go any further than that. They note that he's -- his
24 tenure was notable for his underachievement in operations,
25 management, enforcement, and accessibility. His tenure was
26 marked by low morale and lack of leadership among the attorneys.
27 They point to the declining statistics, then they give you the
28 web site.

1 "As low-wage worker advocates, we
2 count upon the DLSE and the office
3 of the Labor Commissioner to do
4 what it is charged to do --
5 enforce California's labor laws.
6 We look to the Labor Commissioner
7 ... for guidance and dialogue.
8 We may not always see eye to eye,
9 but [it's] important to rely upon
10 that office to be accessible
11 Mr. Jones' tenure was notable for
12 its absence of all of these
13 attributes."

14 He displayed a noticeably low level of accessibility.

15 "We note that Mr. Jones made no
16 attempt to reach out and engage
17 in dialogue with low wage workers
18 ... and displayed little interest
19 in understanding the needs or
20 concerns of our constituents."

21 Donna Ryu was Lawyer of the Year, I might add, who's writing
22 this document.

23 Shortly before his tenure, this is back to the
24 disciplinary action of Mr. Jones -- Mr. Locker:

25 "Mr. Jones' inability to provide
26 leadership in this area was
27 coupled with deeply troubling and
28 politically motivated personnel

1 actions"

2 Again, they suggest you turn this confirmation -- reject this
3 confirmation.

4 I want to read just a moment from Barry Broad's
5 letter.

6 CHAIRMAN PERATA: We're going to take a break.
7 This is about labor standards.

8 [Laughter.]

9 CHAIRMAN PERATA: We will take 10-minute break.

10 MR. CURTIN: And we have representatives from
11 CELA, which is the Employment Labor Lawyers Association. We
12 have an independent attorney, Bobby Alvarado.

13 CHAIRMAN PERATA: You're doing my job for me,
14 thank you.

15 Ten-minute break.

16 [Thereupon a brief recess was
17 taken.]

18 CHAIRMAN PERATA: Rules Committee will
19 reconvene.

20 MR. CURTIN: Mr. Chairman, I want to wrap this up
21 by the comments of the administrative law judge who ruled that
22 Miles Locker should be reinstated, although it's still in front
23 of the SPB, with a quote:

24 "Neither of appellant's
25 supervisors ever counseled or
26 criticized him for his actions.
27 They never informed him that he
28 was doing anything wrong. Other

1 than being instructed not to
2 speak at the Bar meeting, no one
3 higher up in appellant's chain of
4 command told him that he was
5 out-of-line. No one issued
6 appellant a counseling memo or so
7 much as said, 'knock it off.'

8 "By all accounts of DLSE
9 supervisors, appellant was a
10 valued employee with extensive
11 knowledge on topics related to
12 DLSE. Neither Hipshman nor
13 Stevason, appellant's direct
14 supervisors, recommended dismissal.
15 Stevason, appellant's supervisor
16 during the relevant time period,
17 was not consulted regarding the
18 decision.

19 "DLSE provided no
20 counseling or warning to appellant
21 that his behavior was
22 inappropriate. Appellant received
23 no prior or progressive
24 discipline."

25 End quotes.

26 Mr. Jones came on the job, issued a gag order,
27 put Miles on administrative leave. Proceeded to continue the
28 political legal chaos, and then fired Miles and ignored, I

1 believe, the ACLU's agreement to abide by the rights of free
2 speech, First Amendment rights.

3 I want to introduce Bob Alvarado, Northern
4 California Carpenters Executive Officer, just to add some
5 comments from his perspective.

6 MR. ALVARADO: Good morning, Senator.

7 CHAIRMAN PERATA: It's afternoon.

8 MR. ALVARADO: Afternoon, that's right.

9 My name is Bob Alvarado. I'm the Executive
10 Officer of the Northern California Carpenters.

11 This area, this division of the government, is to
12 us where rubber meets the road. And as you can see, and I don't
13 go back into the lengthy testimony that Mr. Curtin has -- has
14 given you, I authorized the litigation because it seems that
15 that's the way that we're going to have to do business with this
16 division of state government.

17 It's been costly. This hasn't been the only
18 litigation that we're involved in. We thought we had another
19 issue settled that was a complete reversal of policy labor on a
20 prevailing wage issue that, you know, we're literally suing
21 every agency in state government trying to get it reversed.

22 It's not just a meal protect -- the meal break
23 protections that we're talking about. We've spent considerable
24 resources to challenge the reversal of -- in courts and
25 administrative hearings and before the Legislature.

26 As you just kind of go through, I'm not sure --
27 you have my full letter. I'm not sure if in the letter I
28 included DSLE's own statistics, but in the reported -- in the

1 statistics reported to the Legislature on May 22nd, 2007, show
2 that enforcement of the state labor laws declined significantly
3 under -- in 2006 under the leadership of acting Labor
4 Commissioner Robert Jones.

5 In the year 2006, the Labor Commissioner
6 collected the least amount of back wages on behalf of California
7 workers ever reported. Mr. Jones reported in 2006 that the
8 agency collected total of \$10.4 million in wages collected by
9 BOFE on behalf of California workers. This signaled the
10 absolute bottom in collections, down from a total of \$31,142,669
11 in 2002.

12 The steady decline in the number of Bureau of
13 Field Enforcement citations also reached its low point under
14 Robert Jones' leadership in 2006. Worksite inspections are
15 conducted to investigate employers' compliance with minimum
16 labor standards. The 2006 statistics show an historic low of
17 4,720 establishments investigated, and only 2,419 citations
18 issued.

19 Decline in license denials and revocations in
20 2006. Under the licensing statutes, the Labor Commissioner is
21 directly empowered to deny applications for new or renewed
22 licenses and to revoke licenses that were previously issued to
23 anyone who lacks the character, competency and responsibility to
24 comply with minimum labor standards. The Labor Commissioner is
25 supposed to carry out this responsibility by filing and
26 prosecuting administrative actions to revoke licenses or deny
27 license applications.

28 No garment industry revocations or licensing

1 details -- denials were administered in 2006. In 2006, there
2 were absolutely zero revocations or license applications in the
3 garment industry, according to the statistics available on their
4 own web site.

5 Limited farm labor revocations in 2006. In 2006,
6 there were two revocations or license application denials. This
7 is at a time when the Governor stepped in, when we were
8 literally having people dying in the fields of California's
9 agriculture.

10 Public works debarment. Public works debarment
11 is another area where the statistics on the web site show a near
12 total collapse of enforcement activities. In 2005, there were
13 no debarments. In 2006 there was one. The current web site for
14 2007 reports three.

15 This is not a type -- the type of distinguished
16 service that entitles a person to move to a high level policy
17 position that will even have greater effect on the lives of
18 California workers.

19 I urge you to do everything within your power to
20 ensure that California's Labor and Workforce Development Agency
21 has the human resources within it to protect California's
22 working men and women in a manner that is consistent with the
23 mission of the Labor Agency.

24 And I just want to add that even though these
25 statistics have reached the bottom, historical bottom, there
26 were no declines in the number of employees that were employed
27 by the agency.

28 Thank you very much for your time this afternoon.

1 CHAIRMAN PERATA: Thank you.

2 Yes, sir.

3 MR. MILLER: My name is Roger Miller.

4 To put you in a little perspective, I started
5 with the division in 1969. So, I've been there, I retired in
6 2002. Been there through all of the development of the labor
7 laws, the Bureau of Field Enforcement in 1982, 90.5 in the Labor
8 Code. I was instrumental in putting that in the Labor Code to
9 emphasize the protection of the working people in California.

10 Going back over the administrations, both
11 Republican and Democrat, during the time I was employed, there
12 was no restriction put on enforcement of the labor laws.

13 There was changes in the labor laws, and I think
14 the administration at that time says if we want to change it, we
15 go to the Legislature and get it changed. There wasn't any
16 policy that come out that put restrictions on people talking or
17 doing enforcement of the labor laws.

18 I can relate back in the early '80s, when a
19 Republican Governor came in, there was an appointee that was
20 going to be director of the department that came up. He made
21 some comments in the newspaper about the enforcement of the
22 division. Consequently, he was rejected as the director.

23 You know, I don't want that to happen now. We
24 oppose the appointment of Mr. Jones based upon his experience,
25 based upon the division.

26 When a lot of this came up in 2005, 2004, it was
27 like a wall was put on DLSE. The staff would not talk to the
28 outside people. You could not engage in a dialogue with them

1 just to discuss an enforcement issue. Everybody was afraid to
2 take a position. We had sent numerous requests for
3 interpretations of the law or a position from the division. All
4 of our requests were rejected. Nobody wanted to come out and
5 take a position. This was the kind of atmosphere that developed
6 in DLSE during this period of time.

7 I'm open to any questions you want. I think
8 previous speakers have pretty much covered the decline in
9 statistics, decline in enforcement, that has happened over the
10 last three or four years. In my opinion, this is basically due
11 to staff morale. You have to have the support of the staff. In
12 the past during the time I was there, the administration might
13 have disagreed with the enforcement policy; they still allowed
14 the division to enforce it.

15 I was involved in some of the discussions
16 regarding the meal period with both current staff and previous
17 staff that was involved in trying to get the position changed.
18 And I can tell you that over the period of time that I have been
19 there, the interpretation of the meal period and on the penalty
20 issue was always the same. And this was the same for probably
21 30 years.

22 I didn't tell you, currently I am working for the
23 Operating Engineers in their Contract Compliance.

24 So, we oppose the nomination.

25 CHAIRMAN PERATA: Thank you.

26 MS. LORENS: Hi. My name is Tracee Lorens, and
27 I'm from San Diego. And frankly, this is the first time I've
28 ever even been inside of the Capitol, and certainly didn't

1 expect that the first time would be to oppose someone's
2 confirmation day.

3 But I feel seriously about, you know, what
4 happened to me personally with the DLSE while Mr. Jones was in
5 charge, and so I thought it was important me to come up.

6 I sent a little letter with some documents, and I
7 don't know if you all received it. But I know you've had a lot
8 of testimony, so I don't want to rehash things that you've got
9 copies of.

10 Basically, to me and like I said, I'm new to the
11 Capitol. An appointment of this magnitude should be looked at
12 sort of like an appointment of a judge, which is something I'm
13 familiar with. And people need to believe that that person can
14 be fair and impartial.

15 And I can tell you that my experience with
16 Mr. Jones personally at the DLSE did not leave me with the
17 impression that he would be fair or impartial. And I've talked
18 to many of my colleagues. I happen to be a plaintiffs attorney,
19 but I also happen to be a Republican. I've talked to many of my
20 colleagues that are defense attorneys.

21 And what we need at the DLSE is the ability to
22 get some insight into the interpretation of these regulations,
23 which we used to get via opinion letters, and we need to be able
24 to obtain documents when documents are available.

25 We need to feel like it's fair and even-handed
26 there. And the problem is, is that it's become so political
27 that it's effecting access to justice. It's effecting my
28 ability to get my low-wage workers' cases into the courthouse.

1 And it was important enough to me to come up here and talk to
2 you about that.

3 My personal experience I won't spend much time
4 on, but I happen to be one of the attorneys on the Brinker case
5 that was mentioned earlier today. Frankly, the DLSE had
6 previously sued Brinker, but that was under the Miles Locker
7 administration. The DLSE had entered into an injunction with
8 Brinker, where Brinker agreed to no longer violate the meal and
9 rest break laws in the State of California pursuant to the wage
10 orders, not pursuant to these statutes that are in great debate
11 right now and in front of the Court of Appeal.

12 And when I got involved in that case, I realized
13 that they were not complying with those laws, and weren't even
14 complying with the injunction. So, I tried to get a copy of the
15 DLSE's file. I was told to send a subpoena.

16 It became really clear to me that at the same
17 time Mr. Jones personally was taking calls, responding to
18 e-mails, and very friendly with the defense team representing
19 Brinker. Mr. Jones told me that he'd heard from Kirby, who
20 would be Kirby Wilcox, the lead attorney for the defendants.

21 This stuff's all in my brief but -- or my letter.
22 The culmination of it all, it was really clear that there wasn't
23 a fair and level playing field. If I needed something, I needed
24 to send a subpoena. The defendants could just make a phone call
25 or send an e-mail. If Mr. Jones was in a deposition, he would
26 respond back with an e-mail to them and ask them to set a
27 conference call, but that wasn't the way that I was dealt with.

28 So my -- you know, and I attached some things.

1 At one point I did finally send a subpoena, and I got the
2 complete record from the DLSE. And then -- and I sent a -- the
3 gentleman who had handled the case for the DLSE was no longer
4 working there, and I had asked if I could have him draft a
5 declaration, or sign a declaration that I drafted about what was
6 in the file, sort of authenticating some of the documents and
7 some of the factual information I gleaned from that file.

8 And out of an abundance of caution, I sent that
9 proposed declaration to Mr. Jones for his review because this
10 attorney no longer worked for the DLSE, and the DLSE attorneys
11 were very sensitive to whether or not Mr. Jones would fire them
12 if they made any public comments at all.

13 So, I did send it up, and Mr. Jones sent a letter
14 to my partner and I. And it was a very scary letter in my
15 opinion. And he basically -- and he also sent, I believe, the
16 letter to this former attorney, Mr. Kolesnikow, from the DLSE.
17 And he said that, quote,

18 "... it appears that Mr. Kolesnikow
19 has elected to provide some
20 information to at least one outside
21 party."

22 In other words, these documents to me, and that he shouldn't
23 have done that. I know that Mr. Kolesnikow felt that Mr. Jones
24 could, you know, possibly even try to have him criminally
25 prosecuted for that. I don't understand the Government Code
26 well enough to know how that's possible, but I know he felt that
27 way.

28 Those documents came from Mr. Jones' office. For

1 him to send a letter like that to me and to Mr. Kolesnikow when
2 I did everything I thought you could do professionally -- I'd
3 subpoenaed the documents; I sent the declaration for Mr. Jones
4 to review -- it just creates a workplace that's so hostile that
5 people can't really effectively do their jobs.

6 And so for that reason, I felt like at least to
7 me, this is similar to a judicial appointment. And it's really
8 important to people, and it doesn't matter whether you represent
9 management or whether you represent employees, you want to have
10 a fair playing field, and you want everybody to be treated the
11 same.

12 That wasn't the experience that I got.

13 Thank you.

14 MS. BANKS: My name Regina Banks, and I'm here
15 on behalf of the California Employment Lawyers Association.

16 And for many of the same reasons that have been
17 so well articulated here this afternoon, we oppose this
18 nomination. We again feel as though the appearance of a level
19 playing field is what's important to our 800 member attorneys
20 statewide, and we just don't feel that Mr. Jones is either able
21 or willing to enforce the labor laws of the State of California
22 in a way that makes our members feel as though they are being
23 heard. For that reason, we oppose the nomination.

24 CHAIRMAN PERATA: Thank you both.

25 Mr. Padilla.

26 SENATOR PADILLA: Thank you, Mr. Chair.

27 I know there's been a lot of testimony on both
28 sides on this already. It's sufficient enough to give me pause

1 and concern, and the clock is running.

2 So, I think what I would request is maybe afford
3 the appointee an opportunity to respond to some of the issues
4 that have been raised: the reduction in enforcement; the gag
5 order issue; the issue very important to me, the independent
6 contractor misclassification piece.

7 There's so much that's been put on the table, I
8 think it may serve the Committee well to put this hearing over
9 at least a week to allow us to do some more homework here.

10 SENATOR DUTTON: I would concur.

11 SENATOR CEDILLO: Concur.

12 CHAIRMAN PERATA: All right.

13 MR. JONES: All right, that's all right.

14 I certainly want -- I certainly would want the
15 Committee to take full consideration of everything that's been
16 presented.

17 And I just want at this point to say one thing.
18 And that is that I appreciated this opportunity to speak with
19 your staff members. There isn't anything that has been said
20 here today that I don't have a prepared response that I've
21 worked on, except for this last indication about the -- from the
22 attorney in the Brinker case in Southern California.

23 There's apparently something that's been provided
24 to you that I was totally unaware of. I don't know, you know,
25 what she provided to you. But that one has caught me by great
26 surprise, given the facts that took place with respect to that
27 declaration that they attempted to file. And I'd be happy to
28 respond to that. It is a very serious --

1 CHAIRMAN PERATA: We'll make sure you have it.

2 MR. JONES: It's a very serious issue.

3 But with respect to the statistics and all of
4 that, I would -- I'm prepared to respond to those things. And I
5 don't feel that there -- this should be an issue once you have
6 the information.

7 But if it's the -- if it's the pleasure of the
8 Committee to put this over, obviously I will accede.

9 CHAIRMAN PERATA: If there's a document, we'll be
10 more than happy to provide it to you.

11 MR. JONES: I appreciate that.

12 CHAIRMAN PERATA: And I'm sorry that you didn't
13 receive it earlier.

14 We'll put this onto our agenda for next Wednesday
15 as the first item.

16 MR. JONES: Perhaps I could do one thing. I
17 would like to -- I got an e-mail or a fax this morning in our
18 office from the former Labor Commissioner that she asked that I
19 provide to the Committee.

20 CHAIRMAN PERATA: Please. Give that to the
21 Sergeant, great.

22 With that, we'll see you next week. Thank you.

23 MR. JONES: Thank you.

24 If it's all right, you've already seen my family,
25 most of them.

26 CHAIRMAN PERATA: Yeah, a lot of them.

27 MR. JONES: They've done a very good job,
28 especially the younger ones.

1 CHAIRMAN PERATA: They certainly have. They're
2 wonderful little kids.

3 MR. JONES: Thank you.

4 [Thereupon this portion of the
5 Senate Rules Committee hearing
6 was terminated at approximately
7 1:05 P.M.]

8 --ooOoo--
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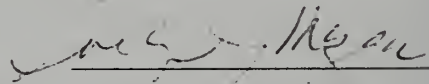
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of May, 2008.



EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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DEPARTMENT OF INDUSTRIAL RELATIONS



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Angela Bradstreet
State Labor Commissioner
Division of Labor Standards Enforcement

March 27, 2008

Chairman Don Perata
Senate Rules Committee
Room 420, State Capitol
Sacramento, CA 95814

Senate Rules Committee

MAR 27 2008

Appointments

Re: Response to questions from the Senate Rules Committee
Date of Confirmation Hearing, Wednesday, April 9, 2008

Dear Chairman Perata,

Thank you for the questions submitted in your letter dated March 5, 2008. I am pleased to provide the following responses.

1. Statement of my goals as Labor Commissioner

When I made a promise to myself upon becoming a citizen of this great country that one day I would enter into public service, I could not have imagined a position for which I feel I am better suited or more passionate about.

My goals as Labor Commissioner reflect the legislative mandate contained in Section 90.5 of the Labor Code: "To vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions... and to protect employers who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by failing to comply with minimum labor standards".

Maximum utilization of enforcement tools to combat the underground economy and to enforce California's minimum wage and overtime laws have been, and will continue to be,

among my highest priorities. The effort to eliminate the underground economy must be a collaborative one. In this regard, I believe it is incumbent upon the Labor Commissioner to reach out to low income worker advocates, employer groups and labor groups alike and to work with them in exchanging information that is often of significant assistance in the success of the division's enforcement efforts.

In the area of Public Works I believe that consistent and predictable enforcement is fundamental to preserving a level playing field. I have and will continue to pursue debarment proceedings where the facts warrant them and otherwise vigorously enforce the prevailing wage laws.

In the wage claim adjudication unit I have instituted procedures designed to speed up the Berman process, and my staff in the retaliation unit has also been working hard to speed up the investigation process. Significant progress is being made.

Shortly after my appointment I launched a voluntary compliance initiative for employers. Since that time the legal unit has successfully effected several multimillion dollar settlements in this regard. In each case all of the affected workers were made whole. Such resolutions are a win win for workers and employers.

I pledge to carry out my duties as Labor Commissioner in the same way as I practiced law in the private sector for 25 years – with the highest degree of integrity and calling them as I see them based on the facts and the law. Everyone with a matter before the Division of Labor Standards Enforcement should feel that he or she has been heard and given a fair shake, regardless of the outcome. Employers and employees alike are entitled to expect a balanced, fair and well reasoned approach which comports with the Labor Commissioner's statutory mandate.

2. Measures taken to maintain and improve DLSE's enforcement efforts since my appointment

I have made enforcement for the protection of low income workers and for the preservation of a level playing field for compliant employers one of my top priorities. In addition to DLSE's participation in the Economic and Employment Enforcement Coalition (EEEC), I have increased the rate of inspections by the Bureau of Field Enforcement ("BOFE") independent of EEEEC. For example, shortly after my appointment I directed BOFE to conduct targeted inspections of the car wash, agricultural and garment industry resulting in hundreds of citations and assessments of over \$3 million in a six month period.

The Public Works unit more than doubled the number of cases that it opened for the second half of the year and \$5.8 million dollars in wages and \$4.2 million dollars in penalties were assessed during that time. I have signed two debarment orders and additional debarment proceedings and investigations are pending.

Our collections unit performed extremely well last year resulting in a 300 percent increase in

BOFE only collections of wages from less than \$4 million in 2006 to over \$12.6 million in 2007. A record number of BOFE penalties exceeding \$7 million was also achieved.

I have also found that reaching out to stakeholder groups whether they be labor or employer groups has also been very helpful in maximizing enforcement efforts. In this respect, I meet with numerous groups on a regular basis, and several have provided information that has been very helpful in bringing high-exposure lawsuits.

Impact litigation is another powerful tool which I have successfully employed in DLSE's enforcement efforts. In December 2007, working in conjunction with the Attorney General as co-plaintiff, we sued an out of state janitorial company, Excel, which misclassified workers as independent contractors. Combining forces increases the scope of damages since the Attorney General may make a claim under Section 17200 of the Business and Professions Code for unfair business practices which contains a four year statute of limitations period, and the Labor Commissioner can pursue significant penalties under the Labor Code which the Attorney General cannot. This is the first time that such a joint lawsuit has been filed and my office is lead counsel. I intend to continue to aggressively litigate appropriate cases in order to send a strong message against the underground economy.

Finally, I have instituted new procedures to ensure that follow up audits after inspections are done promptly, and I have also arranged for legal to be consulted by BOFE and EEEC investigators in high exposure cases, which can be extremely helpful in obtaining key information before litigation commences.

3. How will the expected retirement of the large number of state employees effect DLSE's enforcement efforts? What succession planning is the division doing?

At this time, three members of upper management level have indicated that they will be retiring within the next six months to one year. Only one of these positions is in BOFE. Due to the average age and length of state service of upper management staff it is anticipated that within the next 3 to 5 years there could be a turnover of 50 percent of upper management positions.

Fortunately, BOFE has several new senior deputies who are generally performing well and are demonstrating great promise as future leaders, as demonstrated by the very positive enforcement stats for 2007.

As the phrase infers, succession planning necessarily involves ongoing assessments of the Division's current workload and staffing levels and qualifications against its performance levels and then using that information as a means to project future needs. As a significant part of this effort, in the fall of 2007 I directed that a qualifications analysis be done for Deputy Labor Commissioner I positions. The Division has had difficulty recruiting qualified candidates for the DLC I classification in the past based upon the prescriptive qualification criteria. In an effort to increase the DLC I candidate pool, the Division is working with the Department of Personnel Administration to broaden the eligibility qualifications, thus allowing individuals with private sector/labor management experience to become eligible.

DLSE has also focused its succession planning and growth activities on training sessions of groups of individuals based on program activities and groups of classifications of individuals. For example:

- training sessions have been held for Senior Deputies on management skills such as workload management and stress management;
- training sessions within the six months have been held on process and enforcement procedures;
- process and procedure training for staff has been held;
- statewide training of all senior management staff with breakout sessions on different aspects of personnel management was held in the fall, 2007;

In addition to the Division's own internal efforts, it is an active participant in the Workforce Succession Project for the Department of Industrial Relations.

4. What is being done to educate and assist workers and employers in complying with the *Murphy v. Kenneth Cole Productions* decision?

All staff have been kept apprised of the developments of the Court's ruling and have been trained to respond to the public regarding questions pertaining to meal and rest periods and the statute of limitations that apply.

The DLSE website provides information to the public, both employers and employees, through an FAQ section, information sheets and memoranda posting their rights and responsibilities with respect to meal and rest period requirements including the three year statute of limitations period established in *Murphy v. Cole*.

DLSE also participates in educational outreach programs with EDD which is targeted at small employers. Each half day seminar covers a wide range of basic labor law and employment tax subjects. Part of that presentation is a section on the obligations and requirements for meal and rest periods. Over seventy such seminars are scheduled for 2008.

5. Do you believe the existing regulations regarding meal and rest periods provide adequate guidance to workers and employers? If yes, why? If not, how can they be improved?

The relationship between the more recent statutory provisions relating to meal periods and the pre-existing wage orders, and apparent conflicts in language, have caused great confusion which was apparent to me from the public forums.

Such confusion caused me to send a letter to the Court of Appeals in *Brinker Restaurant v. Superior Court of San Diego County*, urging the court to issue citable precedent clarifying multiple issues. The Court of Appeals has recently set oral argument regarding an issue of first impression relating to whether employers have an affirmative duty not only to provide a thirty minute meal period to their employees, but also to ensure that the employees actually take the meal period once provided.

I have asked the court to publish whatever decision it makes which should provide much needed clarity to this and other issues.

Employers and employees with collective bargaining agreements also expressed confusion and uncertainty at the forums about the effect of the Court of Appeals ruling in *Beardon v. Borax* which repudiated a provision of a wage order on the basis that it was inconsistent with the express statutory language in Labor Code Section 512.

6. Last summer, shortly after you were appointed Labor Commissioner, you conducted a hearing on this issue. What conclusions did you draw from the testimony presented?

Shortly after my appointment, I decided to hear for myself first hand how workers and businesses are being affected by the current laws. I listened to statements from over 200 attendees in Sacramento and over 400 in Los Angeles. Additionally, I received over 2,000 written submissions. I listened to testimony on the detrimental effects of fatigue and hunger and the importance of breaks in maintaining optimum levels of productivity, accuracy and efficiency.

A common theme expressed by significant numbers of workers and employers was a desire for more flexibility in the start time of meal breaks. Restaurant workers told me that their tips from customers are often highest at the time that they are mandated by the statute to take a meal break and that they are therefore losing valuable income by being forced to stop work. Truckers and delivery drivers explained that it is often unsafe to pull off the road, yet their employers require them to do so if they are about to enter the fifth hour of work. Security officers and others who protect the public discussed the increase dangers posed by a lack of flexibility from a safety and homeland security perspective. Nurses and hospital workers testified that the lack of flexibility may jeopardize patient care. The prime reason expressed by those who opposed more flexibility was a fear that this would erode the fundamental right to take a meal break.

Conflicts and confusion in the statute and in the IWC orders have proven problematic. The dialogue in the public forums revealed much common ground which I hope will be a catalyst in moving the ball forward for workers and for businesses.

EEEC Questions 7-9

7. Are existing laws and regulations adequate in protecting employers who comply with the law from those who attempt to gain an unfair competitive advantage at the expense of their workers by failing to comply with minimum labor standards? Why or why not?

I believe that the existing laws and regulations provide EEEEC and DLSE with adequate enforcement mechanisms. Stop work orders and significant fines for failure to secure workers compensation, citations for violating licensing requirements, child labor laws,

minimum wage, cash pay and overtime laws all provide multiple effective enforcement tools.

While we have the ability and legal staff necessary to force access and compliance in our inspection process, we have rarely encountered the need to utilize these legal remedies. Once we have targeted suspected non-compliant employers for sweep activity, we have been able to effectively utilize the existing laws and regulations applicable to each participating EEEEC agency, including DLSE, to address illegal activities.

8. What impact has EEEEC had on labor law enforcement and what recommendations can you offer for improving the coordination and effectiveness of enforcement efforts?

In the eight months since my appointment I am aware that significant efforts have been made in improving the overall effectiveness of EEEEC by providing for differing participating enforcement agency team structures for activities in each individual targeted industry and geographic location. The increased cooperation between DLSE and the other participating enforcement agencies within EEEEC has also made it possible for this year's addition of a fully dedicated DLSE Deputy Labor Commissioner IV manager working out of the LWDA with the express responsibility for more fully coordinating all of the statewide operations of the program.

EEEC's positive impact on overall labor law enforcement has become evident in both our on-the-ground sweep activities and the rapid increase we are experiencing in outreach participation by industry employers. One example with direct implications for DLSE is the significant decrease we have seen in unlicensed farm labor contractors. My staff tell me that when EEEEC operations first began, it was common to find many unlicensed farm labor contractors operating in the fields.

During the past year we rarely found an unlicensed farm labor contractor. Growers and Farm Labor Contractors have told me that this change is largely due to increased awareness of active EEEEC enforcement activities and the broad dissemination by EEEEC of DLSE required licensing, registration and education information provided to local employers through our regular outreach programs. A similar decrease in unlicensed operations is being seen in the car wash industry.

Simply put, EEEEC is designed to be the type of enforcement effort that is amenable to rapid changes in its operational methods as may be dictated by both our ongoing experience in the field and changes in the ways in which illegal business may attempt to adjust their manner of operation to avoid detection. This design has positively affected DLSE's enforcement efforts in the EEEEC targeted industries.

9. The Governor's proposed budget for 2008-09 indicates that EEEEC will institute performance measures on the effectiveness of the coalition. Please describe this effort and give some specific examples of the performance measures.

The Governor's proposed 2008-09 budget will continue the current basic funding for all the limited term enforcement positions in the EEEEC program departments and divisions, including DLSE with only one additional position. That position will be a dedicated program manager at the Deputy Labor Commissioner IV level who will be assigned to LWDA with the responsibility for the management and coordination of the EEEEC's statewide activities. The overall proposed yearly budget for the 16 DLSE positions and the one DLSE related position at the LWDA is \$1.8 million.

A new program designed to measure the performance of all EEEEC activities is in the process of full implementation. In addition to a newly designed data collection protocol for all sweep activity, this program includes a formal audit program of the effectiveness of our enforcement sweeps that is based upon regularly selected random samples of prior offenders. The audit process involves reviews of the employer's current tax reporting, licensing, wage claims, and worker's compensation insurance status. It also includes site surveillance and unannounced re-inspections where warranted.

We have also recently put into place formal procedures for evaluating the effectiveness of our increased outreach and education programs throughout the state. These procedures include the compilation of participant questionnaires and the immediate sharing of the results with the program presenters. We are also regularly reviewing the feedback received after our participation in live local Spanish language radio station call-in programs where teams of bilingual DLSE and other EEEEC enforcement officers speak directly with members of the public concerning wage and hour questions. Finally, we are regularly reviewing and collecting the utilization statistics received from our telephone provider relating to our newly established toll-free California Worker Information Hotline. We anticipate significant increases in these utilization numbers after EEEEC's advertising campaign begins later this year.

10. In your view how pervasive is the problem of misclassification of employees as independent contractors? How did you arrive at your conclusion?

The failure to comply with legal obligations concerning employees by erroneously classifying them as "independent contractors" deprives employees of protections to which they are entitled under California and federal law. It also disadvantages those employers who comply with their legal obligations concerning their employees and who must compete directly in the marketplace. Accordingly, tackling the problem of non-compliance based on this type of misclassification is a priority of mine, as evidenced by the civil lawsuits filed by the DLSE since my taking office.

Over the last few years, there have been several California lawsuits in the courier industry, including class actions, involving claims of misclassification. See *Air Couriers Int'l v. Employment Development Dept.* (2007) 150 Cal.App.4th 923 and *Estrada v. FedEx Ground Package System* (2007) 154 Cal.App.4th 1. In 2006, the DLSE was successful in obtaining a favorable decision from the California Court of Appeal in *JKH Enterprises v. Department of Industrial Relations* (2006) 142 Cal.App.4th 1046. The decision highlights the dangers faced

by employers that improperly designate workers as independent contractors. The case emanated from a Labor Commissioner inspection of a small courier business that had classified its drivers as independent contractors.

The janitorial industry is another industry where we are aware of misclassification issues in this State. Based upon investigations conducted by the DLSE since my appointment, we have identified employers, which are frequently lower tier subcontractors, paying day rates lower than the legally-required amounts and failing to comply with several other provisions of law using the justification that these workers are independent contractors. As a result, the DLSE has recently filed civil lawsuits against three janitorial service companies.

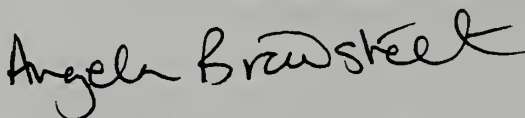
11. What enforcement remedies currently exist? Do you believe they are sufficient? If so, why? If not, what else should be done?

Numerous enforcement remedies currently exist for individuals who are misclassified as independent contractors. These include remedies affecting employer liability for violation of California's wage and hour laws and workers compensation statutes and regulations which are discussed in the answer to question seven. These remedies are available to workers either through the DLSE's administrative procedures or private civil actions, as well as through direct enforcement by the DLSE. Labor Code Section 2810 provides an additional enforcement remedy in low income industries.

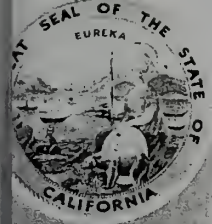
Given the recent cases in this area that clarify and expand the law, and the fact-intensive enquiry and analysis which must be made on a case by case basis, there are sufficient enforcement remedies in this area provided in the Labor Code.

Thank you for the opportunity to answer your questions and for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Angela Bradstreet". The signature is written in a cursive, flowing style.

Angela Bradstreet



Labor & Workforce Development Agency

Governor

Arnold

Schwarzenegger

Secretary

Victoria L. Bradshaw

April 7, 2008

Senator Don Perata
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

Agricultural
Labor
Relations
Board

RE: Confirmation Hearing May, 14, 2008

California
Unemployment
Insurance
Appeals
Board

Dear Senator Perata:

In response to your request of March 14, 2008, following are my answers to your questions and enclosed is a copy of my updated Form 700, Statement of Economic Interest.

California
Workforce
Investment
Board

Goals and Responsibilities

1. Please provide a brief statement of your goals as the agency secretary's key advisor on labor enforcement. How will you measure your success?

Department of
Industrial
Relations

My primary goal is to provide the secretary with well informed advice on how the Labor and Workforce Development Agency (LWDA) can best achieve its overall objectives. One method of achieving these goals requires that I take all actions necessary to streamline the coordination of the activities of the various LWDA departments, divisions, and boards (LWDA "divisions") along with interests of outside parties including workers, unions, employers and general members of the public. The primary measurement of my success in my performance of my responsibilities will be the secretary's evaluation of how well I advise her and how well I handle the issues we regularly encounter within the operations of the LWDA enforcement divisions for which we are responsible. I am certain in making her evaluations, the secretary will consider all the feedback she regularly receives from many sources including the legislature and the public.

Economic
Strategy
Panel

Employment
Development
Department

Employment
Training
Panel

Senate Rules Committee

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Appointments

2. Please describe your role and specific oversight responsibilities in regard to enforcement personnel assigned to the various departments, boards, and divisions under the agency's jurisdiction.

In my position I work directly with the division chiefs and managers responsible for the activities of the Economic & Employment Enforcement Coalition (EEEC), the enforcement unit for which I am directly responsible. In addition, I often participate in the actual enforcement sweeps where I have the opportunity to interact directly with the assigned enforcement personnel. As the former chief counsel and acting labor commissioner at the Division of Labor Standards Enforcement, I was fortunate to have developed good direct working relationships with many of these investigators and other enforcement personnel.

With respect to all other LWDA divisions, I am responsible for ensuring that there is overall coordination of the enforcement activities engaged in through their assigned personnel. This involves the obvious goal of making certain they are not taking inconsistent enforcement positions that would frustrate our overall efforts and possibly lead to uncertainty among those affected by our enforcement activities. Because of the separate statutory and regulatory schemes affecting each division, my position within the LWDA provides me with the unique ability to see across all the units with the concurrent ability to address any concerns to the highest levels of management having the authority to ensure that timely adjustments can be made where necessary. It also provides me the opportunity to make certain that the various managers are informed of how the other divisions' personnel are addressing similar or directly related enforcement activities.

3. How is the agency planning for the expected retirement of a large number of state employees in the coming years?

The eminent loss of large numbers of skilled, long-term employees is one that will impact all California employers, public and private. LWDA fully recognizes the very real problems this loss will present. A large portion of our current investigators and industrial hygienists have many years of specialized experience in their particular fields of work. In anticipation of this loss all of our sub-agency units are actively involved in formalized succession planning efforts. For example, our largest department, EDD, adopted a formal plan in 2005. That plan identified objectives and sets forth both short and long-term strategies that address recruitment, training and retention of EDD staff. One aspect of these efforts has resulted in the EDD managers now being provided monthly attrition and aging information that allows them to address both the general and specific succession program operations. The plan has also resulted in comprehensive new recruitment and training efforts at EDD. At the Department of Industrial Relations

(DIR), a formal comprehensive "Workforce Succession Plan" is currently under development. This plan is the result of recently completed succession planning training by DIR staff and is intended to apply to all DIR divisions/programs. Their DIR succession plan will build on existing succession planning efforts of DIR divisions that have previously anticipated and identified specific future employee replacement needs.

Underground Economy

4. Please describe the agency's efforts in bringing entities involved in the underground economy into compliance with payroll tax and labor laws?

The Labor and Workforce Development Agency has been diligent in designing, implementing, and administering programs specifically directed at detecting and bringing entities in the underground economy into compliance with all state tax and payroll laws. Almost immediately upon taking office, Governor Schwarzenegger proposed and the Legislature approved the creation of the Economic and Employment Enforcement Coalition (EEEC). This partnership of state agencies and the United States Department of Labor was tasked with identifying the worst offenders in the underground economy via targeted enforcement actions throughout the state. As is fully discussed in LWDA's recent "Report to the Director of the California Department of Finance & California Joint Legislative Budget Committee," in the first two complete years of its existence, the EEEC has been very successful in addressing this problem in a number of specific low wage industries along with the construction industry. In fiscal years 2005-07 we conducted almost 3000 inspections resulting in over \$39 million in citations assessments, projected penalties and payroll tax liabilities. We also identified over \$109 million in unreported wages of California workers.

In addition to the EEEC, the LWDA has continued and refined its underground economy enforcement efforts through the Joint Enforcement Strike Force (JESF) and its related joint enforcement teams administered by EDD. It has done this by having serious and complex cases assigned to JESF teams of experienced tax and labor law enforcement members on a case-by-case basis. EDD has also expanded its Voluntary Compliance Program to permit EEEC investigators to refer newer non-complying employers to the program where they can come into compliance through their voluntary self-assessment and payment of their tax liabilities.

The LWDA has also regularly participated directly in many of its divisions' education and outreach programs that are directed at their unique legal requirements and roles. We believe that having top level agency participation in

these programs helps in stressing the importance of our statewide underground enforcement efforts.

5. How do you measure the agency's progress in combating the underground economy?

The primary problem encountered in attempting to statistically measure progress in combating the underground economy is the lack of baseline data against which any comparison can be made. Economists agree that this lack of reliable statistical data is due to the total lack of reporting by employers that is the very definition of the term "underground economy." We can, however, measure the effectiveness of our enforcement operations by comparing them with those generally of the agencies that are a part of the EEEEC.

Because of the unique targeting techniques developed by the EEEEC, employers inspected by the EEEEC in its sweep operations are almost all those actually operating in the "underground economy." While we utilize a number of targeting techniques, these techniques always result in our targeting those employers that our preliminary data indicate are underreporting their number of employees, have no record of current workers' compensation insurance coverage, or, most often, both. Both of these measures are specific criteria for underground economy operations. One good statistical measure of our effectiveness is the very high rate of citations and assessments that are resulting from our sweeps. In the last complete year of the EEEEC operation (2007) our violation rate was over 300% meaning we issued an average of over three citations and or assessments for every employer we inspected. This is much higher than we initially encountered prior to our implementation of our pre-sweep targeting program.

Another good measure of the effectiveness of the EEEEC in combating the underground economy is the average tax liability change found by EDD in audits of employers targeted by EEEEC. Our latest figures for the state fiscal year to date indicate the average change in tax liability to be \$63,635 per audited employer. This figure compares to an average of \$18,000 for all other audited employers. These EEEEC instigated audits have also resulted in 23 percent of the offending employers being assessed fraud penalties which is more than double non-EEEC actions.

We also must consider changes in behavior we observe in our weekly sweep and outreach activities. These show an overall increase in both employer and worker cooperation during our inspections, including the clear willingness of workers to provide us with detailed employment and working condition information. We have also seen a significant increase in employer participation in our post-sweep presentations as well as in our industry sponsored educational programs.

Economic and Employment Enforcement Coalition

6. What do you see as the strengths and weaknesses of California's labor enforcement infrastructure?

There can be no question California has one of the most stringent and comprehensive labor and employment law systems for the protection of workers in the United States. This system of laws covers virtually every aspect of worker safety, job protection, and wage and hour regulation. The controlling laws are contained in numerous state codes and regulations that are administered and enforced by a myriad of separate agencies, departments, divisions, boards, commissions, and panels. In addition, many of these laws overlap and must be interpreted in accordance with similar federal laws and regulations.

This broad range of worker protection statutes and regulations is both the strength and weakness of the California labor enforcement infrastructure. While workers are certainly provided with strong protections, the delegation of enforcement responsibilities to many independent state agencies and their divisions makes it difficult to ensure that there is consistency in the application of these many worker protections. This problem of inconsistent application and enforcement is compounded by the ambiguities and conflicting language in many of the actual statutes, including a number in the California Labor code, itself. All of these issues inevitably lead to uncertainty among both workers and employers as to what must be done for employers to be in compliance. Of course, if employers make the wrong interpretation, the resulting financial consequences can be disastrous. This ambiguity and uncertainty has resulted in the need for repeated high stakes litigation in the California courts. Such litigation has not only taken long periods of time to resolve but has also been costly for all the parties including the State and locally funded court systems. Finally, while labor law enforcement has traditionally been the province of the state's enforcement agencies, relatively recent legislation has permitted private litigants to duplicate much of this enforcement authority through class action litigation.

As more fully discussed in the following answer to question number 7, one effective way in which the State has attempted to reduce the weakness in its labor enforcement infrastructure has been through the consolidation of a number of the primary enforcement departments, divisions, boards, commissions, and panels under the direction and coordination of the Labor and Workforce Development Agency.

7. How does the Labor and Workforce Development Agency coordinate with other departments, divisions, and boards in ensuring compliance with tax collection, discrimination, and program fraud investigations?

The Labor and Workforce Development Agency has as one of its primary functions the coordination of all enforcement activities not only within its divisions, but between those units and all other concerned state agencies as well. This coordination is effected through a number of means including inter and intra-agency written agreement (MOUs), joint enforcement teams and coalitions including the Economic and Employment Enforcement Coalition (EEEC), the Joint Enforcement Strike Force (JESF), and the Employment Enforcement Task Force (EETF). LWDA also has regular meetings of the senior directors and managers of each of its divisions where all areas of mutual concern are discussed and coordinated. This coordination is not limited to agencies of the State. Many enforcement activities and coalitions also involve both local and federal agencies as either regular members of the groups or on an *ad hoc* basis. This coordination extends to regular outreach and other public education programs as well.

8. The Governor's proposed budget for 2008-09 indicates that EEEC will institute performance measures on the effectiveness of the coalition. Please describe this effort and give some specific examples of proposed performance measures.

Earlier this year, EEEC began instituting a number of performance measures of both its enforcement and educational outreach activities. These are the measures indicated in the Governor's proposed budget for the next fiscal year.

Enforcement Performance

The first of these measures is our attempt to verify what subsequent corrective actions have actually occurred with respect to the specific employers we have inspected and found to be out of compliance in the past. Have the employers we ordered to discontinue operations come into compliance or simply gone out of business? Have those we found to be out of compliance and cited, come into and remained in compliance since our inspection? Have some of those we found to be out of compliance simply restarted operations under new ownership and, if they have, are the new owners complying with state law? We believe we now have a sufficient number of prior inspections and completed enforcement actions from which we can take meaningful random samples for follow-up auditing purposes. We are, therefore, fully implementing this audit process. The randomly selected businesses will have all their most recent tax reporting, licensing and registration information reviewed and Division of Labor Standards Enforcement (DLSE),

Division of Occupational Safety and Health (DOSH), and Contractors State License Board (CSLB) case records will be checked for any subsequent complaints, citations, or wage claims. In addition, the actual operating locations will be revisited and placed under surveillance if in operation, followed by unannounced re-inspections, if warranted. Because this audit process has already begun, we fully expect we will have sufficient statistical information for analysis and reporting purposes by the end of the 2008-09 budget year.

Outreach Performance

As noted in our September 2007 Legislative Report, beginning in March 2006 we instituted a comprehensive employer, worker, and public outreach and education program to supplement out sweep and other enforcement activities. We have been expanding this program on a regular basis to include 1) three hour industry specific presentations, 2) industry sponsored outreach events, 3) post inspection meetings with employers who were inspected the prior week in a geographic area, and 4) radio interviews and participation in live call-in programs. In January we began a formal participant evaluation process to measure the effectiveness of these outreach presentations. This process utilizes written participant questionnaires that not only solicit ratings and comments, but also provides all participants with the opportunity to request additional written materials and presentations on related items of interest to them. Our first review and compilation of these participant questionnaires has been extremely encouraging showing consistently high approval ratings and laudatory comments. This feedback is immediately communicated to each of the presenters along with any suggestions for improvement where appropriate. Of course, we will use all feedback in continuing to modify and adjust our outreach programs as we have been doing on an ongoing basis.

We have also very recently put into operation a new 24 hour toll free California Worker Information Hotline that can be used by anyone in the State to locate the appropriate state agency, department, or division to address any employment related problem workers may encounter. This toll free number is 866-924-9757. We regularly review the usage figures for the new toll-free number. When our newly developed advertising campaign for this number is fully implemented, we expect to see significant increases in the number of calls received from workers. We will review how the line usage figures relate to our initial localized advertising test campaign this summer to determine the effectiveness of the campaign.

Independent Contractor Misclassification

9. In your view, how pervasive is the problem of misclassification of employees as independent contractors? How did you reach this conclusion?

There is no question there are significant problems with the continuing misclassification of workers as "independent contractors." This is a long standing problem that the LWDA's various departments, divisions and boards have taken concerted coordinated efforts to address over the past several years. As the result of such efforts, I believe it is a problem that is being corrected.

It must be noted that this is an area of legal interpretation that has developed through a long history of both state and federal court interpretation. In California it now appears to have reached a point of some stability with the adjudication and publication of the recent appellant court cases mentioned in answer to question number 10 below. These cases are ones in which EDD and DLSE played important roles.

While some employers persist in electing to use improper classification of workers as a means of evading both their statutory wage and tax obligations, many others have simply continued to follow long established practices in their industries believing such to be consistent with current law. This is often based upon their good faith belief that to do otherwise would make it impossible for them to financially compete with their competitors who are following the independent contractor model. I believe we have made great strides in addressing these industry problems as evidenced by our recent legal successes in the courier industry and our successful employer outreach education efforts.

We have also seen significant improvements in the traditionally low wage industries covered by our enforcement efforts through the EEEEC. This improvement is evidenced by the few instances of improper independent contractor classification issues encountered in our statewide sweep activities in many of those industries. While it is our goal to end all misclassification of employees as independent contractors, we must keep in mind the need to not interfere with those true entrepreneurs who have a legitimate role in our free enterprise economy and who are truly free from control by the businesses with whom they contract. Our recent legal successes in this area indicate that we are able to correctly make these determinations.

My opinion is based on my direct personal involvement in the management of LWDA enforcement activities over the past two and one-half years. These include both litigation and on the ground enforcement actions through EEEEC and the DLSE Bureau of Field Enforcement.

10. What enforcement remedies currently exist? Do you believe they are sufficient? If so, why? If not, what else should be done?

Currently a large number of effective enforcement remedies exist for correcting the problems with both mistaken and intentional misclassification of employees as independent contractors. The most obvious of these are the various statutes found in the Labor and Unemployment Insurance Codes and the regulations that have been enacted to facilitate their consistent enforcement. These include specific contractor registration and licensing requirements for farm labor, garment manufacture, and construction contractors as well as increased liabilities for those who improperly utilize unlicensed individuals in those industries. They also include employment tax and workers' compensation insurance coverage requirements that have additional criminal prosecution provisions.

In addition to the statutes and regulations, there is a large body of common law concerning independent contractor classification in both the state and federal courts. These significant common law cases in California go back to the 1946 *Empire Star Mines Company Ltd. v. California Employment Commission* and 1989 *S.G. Borello & Sons, Inc. Department of Industrial Relations California Supreme Court cases*. (28 Cal.2d 33 and 48 Cal.3d 341, respectively.) Most importantly, the Division of Labor Standards Enforcement recently successfully prosecuted a lawsuit that resulted in a published decision of the California Court of Appeal that further defines the common law requirements for proper independent contractor classification. That case is *JKH Enterprises v. Department of Industrial Relations* (2006) 142 Cal.App.4th 1046. Similarly EDD recently successfully defended its determination of improper classification in the Court of Appeal in *Air Couriers Int'l v. Employment Development Dept.* (2007) 150 Cal.App.4th 923.

Overall enforcement of the discovery and misuse of independent contractors has been greatly facilitated through the addition of the Economic and Employment Enforcement Coalition (EEEC). Our coordinated enforcement activities are more fully addressed in answer to questions numbers 4 through 8 above.

I therefore, believe that the numerous currently existing legal and regulatory remedies are sufficient to allow us to effectively address the problems with the misclassification of employees as independent contractors. Given the significant recent court decisions in this area that have added clarity to the common law and statutory factors to be considered in enforcing this area of law, I believe any new statutory provisions at this time could lead to confusion and uncertainty requiring unnecessary and costly new rounds of litigation with respect to these increasingly settled factors.

Workplace Safety in the Nail Salon Industry

11. Cal/OSHA has indicated that they have only conducted nine inspections of nail salons within the past five years. What can be done to increase the number of enforcement inspections in the nail salon industry?

I was fortunate to be able to personally attended the Senate Committee on Labor and Industrial Relations "Nail Polish and Product Safety in the Workplace" hearing held in San Francisco in November of last year. At this hearing Cal/OSHA Division Chief Len Welsh invited concerned attendees to meet with him and his staff to discuss how Cal/OSHA could better address nail salon safety. This offer resulted in two meetings with stakeholders held in January and February of this year.

In addition, Cal/OSHA will be conducting a special emphasis pilot program to target nail salons for enforcement inspections and consultation visits, with a goal of conducting a total of 20 site visits during the next 9 months. Cal/OSHA has actively sought input from stakeholders to determine the most effective way of proceeding with this program and anticipates beginning the inspection/site visit process shortly. The findings of this activity will be carefully evaluated to determine how further to proceed.

12. How is Cal/OSHA collaborating with other governmental entities to provide the appropriate oversight, information, and assistance to this industry? What more can be done?

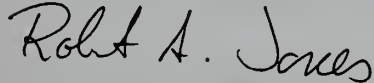
As mentioned above, Cal/OSHA has already held two meetings with stakeholders concerning nail salon safety. These stakeholders include the California Healthy Nail Salon Collaborative which is a coalition of organizations including the Asian Health Service, the Asian Law Caucus, Asian Communities for Reproductive Justice, and the Northern California Cancer Center. Also attending were representatives from the State Board of Barbering and Cosmetology (CBBC), the Senate Labor and Industrial Relations Committee, the Senate Office of Research, and staff from Senator Migden's Office.

In addition to actively working on this issue with the CBBC, Cal/OSHA is prepared to work with the California State Department of Public Health's Division of Environmental and Occupational Disease Control (DEODC) and its sub-divisions as they put together the informational framework necessary to support potential rulemaking by the Cal/OSHA program. Cal/OSHA is also participating in the Green Chemistry initiative that is focused on developing comprehensive models for addressing toxics in California and is providing technical support and advice to the Worker's Occupational Safety and Health Training and Education Program

(WOSHTEP) that trains peer occupational safety and health specialists. The Cal/OSHA Consultation Service has also begun to actively work with the nail salon owners, workers and industry groups to develop materials and training programs specific to that industry. We anticipate the release within the next year of a 20 page publication that will provide general guidance, as well as, California-specific guidance, including hazard checklists for employers to use in developing Injury and Illness Prevention Programs required for all nail salon employers. Finally, Cal/OSHA has arranged to provide educational outreach assistance to nail salon interested parties within the industry through a community forum on nail salon safety to be held in Oakland on April 17.

Cal/OSHA will continue working directly with stakeholders to increase access to the best information available on nail salon safety, and will use its regulatory oversight to the extent of its jurisdiction to focus the industry on making effective use of that information. More time is needed to develop the SB 484 framework so that it can provide Cal/OSHA with the data needed to better define the health risks that exist in this industry.

Sincerely,

A handwritten signature in cursive script that reads "Robert A. Jones".

Robert Jones

PUBLIC EMPLOYMENT RELATIONS BOARD



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April 22, 2008

Honorable Don Perata
Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814-4900

Re: Confirmation of Tiffany Rystrom, May 14, 2008
Member - Public Employee Relations Board (PERB/Board)

Dear Senator Perata:

Below please find my answers to the "Goals and Responsibilities" questions propounded in your March 27, 2008, letter. An updated Form 700, Statement of Economic Interests (as of April 22, 2008) is enclosed.

1. *What do you hope to accomplish during your tenure as a member of PERB?
How will you measure your success?*

- a. Review of appeals:

The majority of a Board Member's time is spent reviewing appeals by employees, employers and employee organizations (unions) from decisions made by Board agents and Administrative Law Judges (ALJs). Appeals from Board agent decisions mainly involve: (1) dismissals of charges filed by an employee, union or employer which do not meet the requirements for a complaint to issue; and (2) decisions regarding representation petitions. ALJs adjudicate unfair charge complaints usually by first conducting a hearing where evidence is received and then issuing a proposed decision based on the ALJ's factual and legal conclusions. Appeals of these proposed decisions are reviewed by the Board. The decisions issued by the Board are precedential and in large part make up the body of law governing collective bargaining in the public sector.

During my tenure I hope to produce precedential decisions which exemplify the high standards I have admired in judges. During my 30 years of practice as an attorney I have represented employees, employers, injured individuals, businesses and the State of California as a litigator in the California trial and appellate courts.

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From this experience I have developed strong ideals of how to approach the task of adjudication and what the end product should be. My top priority at PERB is to carry out these ideals when performing out my adjudication tasks. In this regard, I will strive to be fair, and objective, and to approach my appellate work with intellectual tenacity in analyzing the evidentiary record and applying the law. I want my decisions to thoroughly deal with all issues which are raised resulting in fair and objective factual determinations to which the law is correctly applied in a well reasoned decision.

PERB decisions become the guideposts for many public sector employees, unions and employers and are relied upon by both lawyers and lay people. To increase the usefulness of a Board decision it should be written in a clear, concise and easily understandable manner which does not waste a reader's time with superfluous language. I want my decisions to have the reputation of embodying these qualities.

Many appeals require Board Members to interpret provisions in the collective bargaining statutes in order to apply them. We should interpret the law consistent with the legislative intent bearing in mind always that Board members are not appointed to determine policy but rather to carry out the policies created by the Legislature.

My success in accomplishing these objectives will be measured by the quality of decisions I author and join as a panel member.¹

One final goal of crucial importance relates to the timeliness of PERB's appeal decisions. A consistent comment I have received in my conversations with constituents (when inquiring as to how PERB can better serve them) is the need for more timely decisions. I am a big believer in the saying "justice delayed is justice denied." To carry out the goals the Legislature has assigned to PERB, the Board must find a way to issue timely decisions. Since I joined PERB I have endeavored to eliminate the backlog of cases assigned to me as the author starting with the oldest cases first as well as being a panel member who responds in a timely manner. My immediate goal is to be current by the end of the fiscal year which will be the end of my first ten months with PERB.

b. PERB Processes and Procedures:

In these demanding economic times, PERB needs to take a hard look at its internal processes and procedures to determine if there are ways for PERB to do more

¹ PERB appeals are assigned to panels of three Board Members with one as the author. The author creates the decision. The remaining two panel members also review the record de novo to make sure the decision is a correct statement of the law which thoroughly addressed the issues of the case. This results in all three panel members being responsible for the decision once it is issued.

for less. I intend to be involved in that process and hope to achieve accomplishments in that area.

Related to this is the need for a regular and continuing constituency outreach. On an individual basis I have begun to meet with the different groups which PERB serves and will continue to do so with the objective of learning what PERB can do better and what needs to be changed with revised or new processes or procedures.

I will know if this goal has been accomplished by the feedback I get from PERB's constituents.

c. Looking To The Future:

Last year I took over the law student intern program at PERB. My goal is to have a full house of Board interns (three) each law school semester and to provide these interns with a meaningful legal experience. My model for this is the legal interns program I provided for law students when I was a judicial clerk for the First District Court of Appeal. The long term objective is to generate excitement among up and coming lawyers in practicing public sector labor law. This is a very specialized field and bringing in new legal talent can only make collective bargaining achievements in California even greater.

2. *Based upon the types of complaints PERB reviews and adjudicates, what, in your view, are the most important labor relations issues facing employers and employees?*

The appeals I have handled so far mainly involve conduct occurring in 2005 and 2006 and thus do not provide insights into current labor relation issues. PERB Board Members do not review charges until they reach us in an appeal therefore I cannot draw knowledge from current charges. I have reviewed the current ALJ decision summaries which would involve 2007 conduct but have not gleaned any significant new labor relations issues from them. My answer to this question is based on my conversations with constituents and labor relation specialists at PERB who are extremely knowledgeable. This informal investigation has led to the identification of the following significant labor relations issues with which PERB's and its constituents are or soon will be dealing.

a. Layoffs

The current budget cuts will result in considerable layoffs. The effects of layoffs must be bargained. Additionally, the collective bargaining statutes prohibit layoffs motivated by discrimination or retaliation. There is little doubt that disagreements between employees, unions and public employers on these issues will significantly increase and will need to be resolved by PERB in a timely manner. As stated above,

PERB's ability to correctly but quickly decide these cases will be of primary concern to PERB's constituency.

b. Creative bargaining – scope of representation issues

Another potential factor resulting from the current public funds issue is how new public sector contracts will be bargained. Where there is no increase in wages or benefits to bargain for, unions will develop new and inventive demands, as they have in the past, in order to make gains for their members. This creativeness may result in initial disagreements over whether the new, innovative ideas are within the scope of bargaining. These cases will come before PERB which must be prepared to provide correct as well as timely responses.

c. Essential employee injunctive relief cases involving PERB:

A long standing limitation on economic strikes in the public sector involves work stoppage by employees who provide essential services which cannot be stopped without resulting in imminent danger to public health and safety (essential employees). In these situations the government employer will request a temporary restraining order/preliminary injunction seeking to prevent essential employees from striking. This requires a presentation to the trial court of evidence showing why the specified employees are essential and should be denied participation in the strike.

Recently a Court of Appeal was asked by the City of San Jose to rule that when the complaint for injunctive relief does not implicate the MMBA but is solely premised on the common law prohibition against strikes by safety-sensitive employees, the trial courts rather than PERB have initial jurisdiction.² The court refused to do so holding that absent an explicit statutory prohibition against strikes by particular employees, the question of the legality of such strikes is entrusted to PERB in the first instance.

PERB must undertake the following review in these essential employee cases. First the General Counsel's office collects information from both sides as to whether or not the employee classifications are essential and, after analyzing the evidence, prepares a recommendation for the Board. If a strike is in progress when the employer comes to PERB the time limit for this review and recommendation is 24 hours, otherwise it is 120 hours. Second, the Board reviews the General Counsel's recommendation and either approves or denies the request for PERB to seek injunctive relief on behalf of the employer.

An approval by the Board means that the General Counsel must immediately prepare pleadings for the trial court to review which explain why the striking

² *City of San Jose v. Operating Engineers Local Union No. 3* (2008) 160 Cal.App.4th 951l.

employees are essential pursuant to common law and should therefore be prohibited from striking. As is apparent, these tasks are very time sensitive for the General Counsel's office and the Board.

Potentially, in a large threatened strike involving multiple alleged essential employees, PERB's General Counsel must do an enormous amount of fact finding and analysis in an extremely short time period. This would require putting other work such as processing unfair practice charges aside until the essential employee injunctive relief litigation is completed. This would cause a substantial drain on PERB's General Counsel's staffing resources. It is a future challenge PERB must meet which is of considerable importance to PERB's constituency.

3. *What impact will eliminating the funding for fact-finding contracts and closing the Oakland regional office have on PERB and its constituencies?*

a. Fact finding:

The answer to the effect of eliminating fact finding fees should be put in context.

First, PERB's statutory obligation is only to pay for the chairperson's fees. Under the HEERA and the EERA, the fact-finding stage of impasse requires the appointment of a 3-member panel. Each side gets to choose one member which the choosing side must pay for. PERB appoints and pays for a neutral chairperson. Therefore the fees from PERB pay for 1/3 of the fact finders.

Second, PERB did not have a budget allocation for fact finding in FY 2002-2003 through FY 2006-2007. It was not until recently, FY 2007-2008 that PERB was allocated funds (\$85K) to pay for fact finding. During the period when PERB was not allocated fact finding funds, PERB lowered the hourly fee paid to neutrals to \$100 per day for this service. The result was a very short list of available neutrals to be appointed as the fact-finding chairperson. PERB's constituency responded by often paying for their own fact-finding chairperson and PERB issued very few fact-finding contracts during this period.

I have tried to discern the real answer to this question which is, will the eliminating of PERB's fact-finding fees have an impact on the effectiveness of the neutral fact-finding procedure. It will not decrease the use of this neutral resolution procedure because fact-finding in the EERA and the HEERA is mandatory.

Some of the constituents I discussed this issue with responded that they did not consider fact-finding to be effective regardless of the funding issue. This was based on a perception that the other side would wait for the fact-finding stage to reveal their final offer which would take away from the effectiveness of the mediation procedure. The fact finding procedure was also criticized for lengthening the process. In response to

my questioning of whether the elimination of PERB's fact finding funds would exacerbate these negatives, I was told that if the parties' financial positions are not comparable, the side that can more easily pay for fact-finding can use it to prolong the process to the other party's disadvantage. This perceived disadvantage could be true for a small school district as well as a small union.

The bottom line is that there will be an increased cost to the parties engaging in the fact finding impasse process but it is not possible for me to form an opinion on whether or not it will impact the effectiveness of that process.

b. Oakland office:

The physical presence of the San Francisco (Oakland) regional office serves three purposes. It is a place to: accept filings, conduct settlement conferences with Board agents, and hold hearings.

Although there may not be a significant impact in terms of filing documents given PERB's electronic filing, fax filing and the U.S. mail service, there will be a significant impact regarding losing the Oakland offices' facilities for informal settlement conferences and formal hearings.

I reviewed the list of constituents attending the 66 informal settlement conferences conducted so far this year in the Oakland office to better learn the geographic location of parties using the office. A small number of the constituents involved appear to be located in Napa, Sonoma, Vallejo, and Solano counties. It could be argued that the impact is not significant for these parties due to the proximity of their location to Sacramento.³

However the majority of the constituents attending informal settlement conferences in Oakland this fiscal year are located in San Francisco or Oakland. These parties would have a considerable increase in commute time if their settlement conferences were held in Sacramento. An even more significant impact would be felt by those constituents located in the South Bay (Santa Clara, Mountain View, and San Jose) and even further (Monterey, Pacific Grove) whose commute distance or time would be more than doubled. I counted 20 constituents from these latter areas who participated in settlement conferences at the Oakland office during this fiscal year.

The Oakland office was used for nine unfair practice hearings so far this year. These hearings usually involve multiple witnesses along with their representatives. At any given time the constituents participating in these hearings could be from the same

³ If these constituents take BART to Oakland there will be a significant impact given that is not possible when commuting to Sacramento.

geographic areas as those participating in the above informal settlement conferences if no settlement is reached.⁴

There is no question that the majority of PERB's constituents who use the Oakland office will be significantly impacted with an increased travel time to Sacramento for informal settlement conferences or formal hearings. Whether this impact can be mitigated by finding a way to continue to conduct some or all of these settlement conferences and hearings at a temporary location in Oakland has yet to be determined.

The impact on PERB of closing the Oakland office is the challenge to successfully transfer/transition all of the personnel from the Oakland to PERB's Sacramento office.

4. *Since the Meyers-Milius-Brown Act added to PERB's jurisdiction, the number of unfair labor practice charges handled by PERB has almost doubled. Do you feel the staffing level at PERB is sufficient to meet current workload requirements?*

The number of charges filed after the MMBA was passed jumped from 464 in FY 2000-2001 to 735 in FY 2001-2002. Thereafter these cases increased but not as significantly. With the exception of FY 2005-2006,⁵ the number of unfair practice charges filed has remained constant in the 800-870 cases per year range since FY 2001-2002.

Staffing at PERB after passage of the MMBA remained constant until 2005 when the Legislature approved three attorney positions. After that staffing remained the same until the current fiscal year when PERB was allocated an additional ALJ and two staff counsel positions. The addition of one more ALJ to hear unfair practice cases has resulted in the time for setting hearings decreasing from five to six months to 60 to 90 days. ALJ time to write proposed decisions has been reduced from an average of 80-90 days with some significantly above that. Next fiscal year it is anticipated that this average will decrease to 60 days. The above ALJ data shows that if the unfair practice workload stays constant it can be handled by PERB's ALJs in a satisfactory manner.

The same is not necessarily true for the General Counsel's office because unfair practice charges are only part of the workload. The General Counsel's office also handles all of the representation cases, impasse requests, and all litigation projects which include injunctive relief requests. Representation cases have remained somewhat constant (100-112) cases per year for the past three years as have impasse requests. However there has been a significant increase in litigation projects.

⁴ This fiscal year constituents attending hearings in Oakland were from Oakland, San Francisco, and Sonoma.

⁵ In FY 2005-2006 1042 unfair practice charges were filed.

During FY 2005-2006 and FY 2006-2007 there were 55 and 83 projects, respectively. In the first nine months of this fiscal year there have already been 65 litigation projects.

This increase in litigation projects means less staff time for unfair practice charges which results in a delay in processing unfair practice charges. Currently PERB has a backlog of 437 unfair practice charges. Based on these facts, I would say that the General Counsel's office is able to handle its current workload in that all of its tasks are being accomplished albeit not as fast as is desirable. If the workload increases resulting in larger lag times in processing unfair practice charges the staffing level could become insufficient. Ideas on dealing with this are discussed below in my answer to question number five.

The final part of the equation is the appeals handled by Board Members. The statistics for the preceding two years, FY 2005-2006 and FY 2006-2007, indicate 74 to 81 filings per year and 80 to 89 projects handled by Board Members per year. Past years where there have only been three or four Board members resulted in a backlog of appeals which the current Board is handling. In my opinion the five current Board members and their legal advisors are sufficient to handle this backlog and meet the Board's current workload requirements.

5. *If you don't believe the current staffing level is adequate, how would you propose to address this considering our current budget deficit?*

If staffing becomes inadequate in the General Counsel's office as discussed above PERB will have to creatively solve the problem by addressing its internal operation. In my view PERB should begin this now by looking at its internal processes with the goal of finding ways to obtain more work from its current staffing level. Procedures should be reviewed to determine if there are ways to simplify or in some other way to make the processing of unfair practice charges faster without giving up the quality of Board agents' decisions. Time saving on other tasks should also be investigated in an effort to find more time to allocate to processing unfair practice charges.

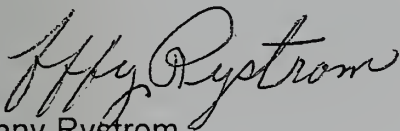
6. *Within the past several years, PERB's litigation caseload has increased considerably. This is due in part to issues involving PERB's claim to exclusive initial jurisdiction over employee relations matters covered by the Meyers-Milius-Brown Act. Do you think the law in this area needs to be changed or clarified? If so what changes would you recommend?*

At the present time I do not see the need for any change or clarification of the law in this area. The Sixth District Court of Appeal in *San Jose* (see footnote 2) has addressed the issue thoroughly and the same issue is currently pending on appeal in two other Courts of Appeal. This jurisdiction litigation should end but will be replaced

by the parties coming to PERB in the first instance for injunctive relief in essential employee cases as discussed above.

I thank you and your staff for taking the time to develop these questions and for the opportunity to answer them in writing. I look forward to discussing any queries you may have regarding my responses along with any other questions on May 14, 2008.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tiffany Rystrom".

Tiffany Rystrom
Board Member

Enclosure

cc: Nettie Sabelhaus, Rules Committee
Appointments Director

A handwritten checkmark.

Robin W. Wesley, Public Employment Relations Board

Goals and Responsibilities

1. *What do you hope to accomplish during your tenure as a member of PERB? How will you measure your success?*

My experience at PERB dates back to January 1991 when I came to PERB as a legal advisor. Over my 17 years at PERB I have served in every position in the agency from legal advisor to regional attorney, acting general counsel and administrative law judge. I am tremendously honored to be the first PERB staff member appointed to the Board. I believe my experiences working directly with our constituents, investigating their unfair practice charges and mediating disputes, enhances my work as a board member.

As a quasi-judicial agency, PERB is charged with administering seven collective bargaining statutes covering public employers and employees, and resolving disputes between the parties. It is my goal to assist the parties in understanding their obligations under the law and thereby help them achieve and maintain stable labor relations. By issuing legal decisions that provide clarity and guidance, the parties will better understand their collective bargaining obligations.

I also seek to continue PERB's outreach to constituents by enhancing the resources of the agency available to them. The Board has recently developed a process for filing unfair practice charges on-line and made PERB decisions and legal research tools available through our website. PERB has conducted two very successful conferences in the past two years, providing union and management representatives insight into PERB processes and available resources such as mediation. Finally, a very valuable tool for PERB is our semi-annual advisory committee meetings. These sessions allow the Board to explore ideas for enhanced services and provide opportunities to receive input from our constituencies on where we can do better.

2. *Based upon the types of complaints PERB reviews and adjudicates, what, in your view, are the most important labor relations issues facing employers and employees?*

By far the biggest impact on collective bargaining expected in the coming months comes from the extreme fiscal pressures facing all levels of government. The PERB administered statutes cover schools, universities, trial courts, special districts, cities, counties and the state. Government leaders are currently confronting difficult decisions involving cuts in services, staff reductions, policy and operations changes, and increasing healthcare and pension fund costs. The collective bargaining statutes require government managers and employee organizations to meet and confer before changes in terms and conditions of employment may be implemented. The exchange of ideas and proposals through collective bargaining is a positive method of identifying funding priorities. However, where parties face significant fiscal pressures, PERB is more often called upon to assist in resolving the parties' differences. PERB has been very successful in this regard. As a neutral third party, PERB conducts settlement conferences and assists parties in working through issues in dispute. In the last

Robin W. Wesley
Senate Rules: May 14, 2008

fiscal year, 76% of PERB-issued complaints were settled through this process, thus avoiding the need to elevate the dispute to a formal evidentiary hearing.

Budget-Balancing Reductions in the Governor's Budget

3. What impact will eliminating the funding for fact-finding contracts and closing the Oakland regional office have on PERB and its constituencies?

Fact Finding

Two collective bargaining statutes, the Educational Employment Relations Act (EERA) and the Higher Education Employer-Employee Relations Act (HEERA), require the parties to participate in fact finding if they reach an impasse in negotiations. A fact finding panel consists of one representative from each party and a neutral chairperson, typically a professional with experience in mediation. The role of the fact finding panel is to review the issues in dispute, the positions of the parties and to issue a report setting forth the panel's recommendations for resolution of the contract. The parties are thereafter required to consider the report in good faith to determine whether contract resolution is possible.

If the parties request that PERB appoint an individual to chair the fact finding panel, PERB is statutorily required to pay the cost of the chair. PERB currently pays \$800 per day plus expenses. On average, the cost of a fact finding contract is \$4,000. If PERB is no longer required to pay for fact finding, the parties would have to share the cost of a fact finder. In essence, we would be shifting the cost to the parties. On the positive side, the vast majority of contract negotiations conclude prior to reaching fact finding. Further, eliminating PERB funding may increase the parties' incentive to settle contracts in mediation to avoid the cost of fact finding. In addition, the parties are familiar with the concept of cost sharing as they typically split arbitration costs when grievances advance to binding arbitration.

Oakland Regional Office

First, we believe PERB's presence in the bay area is important and our preference is to keep the Oakland regional office open. The office serves a large number of our constituents in the area including the University of California, school districts and many cities and counties new to PERB under the Meyers-Milias-Brown Act. However, we understand our obligation to share in the budget reductions.

Most unfair practice charges reach PERB offices by mail or on-line filing. While Oakland typically receives slightly fewer charge filings than the Sacramento and Los Angeles regional offices, parties come to the Oakland office for settlement conferences and administrative hearings. The closure of the office would require PERB to relocate hearings to the Sacramento office or other available facilities. Clearly this would impact our constituents by extending their travel time.

However, the alternative to closing the Oakland office -- staff reductions -- would critically impact PERB's mission to resolve disputes and enhance labor relations. PERB has ten attorneys to investigate unfair practice charges and conduct settlement conferences, among other duties, and seven administrative law judges to conduct hearings. Due to the lengthy procedural requirements of the layoff process, PERB may need to initiate the reduction of as many as half of our regional attorneys in FY 2008-09 to achieve the savings derived from closing the Oakland office. The effect of this reduction in staff would result in extreme delays in the investigation of charges filed by our constituents. Such delays could undermine stable labor relations, permit labor disputes to fester and interfere with the purpose of the collective bargaining statutes under PERB's jurisdiction.

Meyers-Milias-Brown Act

4. *Since the Meyers-Milias-Brown Act was added to PERB's jurisdiction, the number of unfair labor practice charges handled by PERB has almost doubled. Do you feel the staffing level at PERB is sufficient to meet current workload requirements?*
5. *If you don't believe the current staffing level is adequate, how would you propose to address this issue considering our current budget deficit?*

PERB is a small agency with an important function. We are fortunate to have an experienced, hard-working staff who are sincerely dedicated to PERB's mission. PERB has long maintained a lean operation. When the Legislature gave PERB jurisdiction over the Meyers-Milias-Brown Act in 2001, budgetary conditions precluded the addition of new staff at that time. Internally, PERB got creative with our existing resources. We developed cross-training of staff, allowing our specialists in representation work, for example, to train regional attorneys. Regional attorneys have also gained experience mediating settlement conferences, conducting formal evidentiary hearings on representation matters and handling litigation. Veteran staff have more opportunity to mentor less experienced staff. The new training and skills have broadened the staff's depth of understanding of collective bargaining and labor relations and stretched our resources to cover increasing workload.

Since 2001, as the number of unfair practice charges increased and state funding restrictions eased somewhat, PERB sought and received authorization for more staff. We did not approach the Legislature with requests for large numbers of staff only to wait for work to develop. Rather, PERB made certain that consistent workload increases supported the requested resources. PERB certainly does not have excess staff, but we have been responsive in difficult fiscal years by waiting until additional staffing requests were fully justified. In light of the critical need to retain experienced staff, PERB has proposed giving up office space to avoid the reduction of staff.

6. *Within the past several years, PERB's litigation caseload has increased considerably. This is due in part to issues involving PERB's claim to exclusive initial jurisdiction over employee relations matters covered by the Meyers-Milias-Brown Act. Do you think the law in this area needs to be changed or clarified? If so, what changes would you recommend?*

Of the seven collective bargaining statutes administered by PERB, only the Meyers-Milias-Brown Act initially existed outside PERB's jurisdiction. Before 2001, unresolved disputes between local governments and employee organizations were addressed in the superior courts. Since PERB has taken on responsibility for the Meyers-Milias-Brown Act, legal challenges to PERB's jurisdiction have arisen. PERB has quickly responded to these challenges and has been very successful in maintaining our delegated jurisdiction.

For example, in *Coachella Valley Mosquito & Vector Control District v. Public Employment Relations Board* (2005) 35 Cal.4th 1072, the California Supreme Court held that the statute of limitations applicable to the Meyers-Milias-Brown Act, which guides PERB's jurisdiction over unfair practice charges, is the same as that in other statutes administered by PERB. The Court of Appeal ruled in *City and County of San Francisco v. International Union of Operating Engineers, Local 39* (2007) 151 Cal.App.4th 938, that PERB has initial exclusive jurisdiction to decide whether there has been a violation of the impasse procedures set forth in a city charter. Most recently, PERB's jurisdiction was tested in several cases involving strikes by essential employees. Once again, the court ruled in *City of San Jose v. Operating Engineers Local Union No. 3* (2008) 160 Cal.App.4th 951, that the parties must take their dispute to PERB. PERB has consistently worked to defend its jurisdiction in the courts and our efforts have been validated. At this time, the state of the law in these areas is clear. As the parties see the courts' repeated rulings directing them to bring their disputes to PERB, we anticipate the challenges to PERB's jurisdiction will diminish.

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